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United States
Circuit Court of Appeals
For the Ninth Circuit.

SOUTH COAST STEAMSHIP COMPANY, a Corporation, Claimant of the Steamer "SOUTH COAST," etc.,

Appellant,

vs.

J. C. RUDBACH,

Appellee.

Apostles on Appeal.

Upon Appeal from the United States District Court for the Northern District of California,
First Division.

Filed

OCT 28 1916

F. D. Monckton,
Clerk

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

IRA S. LILLICK, Esquire, Proctor for Libelant.

MARCEL E. CERF, Esquire, H. W. GLENSOR,
Esquire, and CHAS. H. SOOY, Esquire, Pro-
tors for Respondent and Claimant.

UNITED STATES OF AMERICA.

*District Court of the United States, Northern Dis-
trict of California.*

No. 15,939.

J. C. RUDBACH,

Libelant and Appellee,
vs.

The Steamer "SOUTH COAST," etc.,
Respondent.

SOUTH COAST STEAMSHIP COMPANY (a Cor-
poration),
Claimant and Appellant.

Praecipe (and Stipulation and Order Re Exhibits).

To the Clerk of Said Court:

Sir: Please issue and forward to the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, apostles in the above-entitled libel and include therein the following:

Libel;

Answer to libel and exhibit thereto attached;

Reporter's transcript;

Opinion and order to enter a decree in favor of the libelant for the amount prayed for;

Final decree;
Notice of appeal;
Assignment of errors;
Claimant's Exhibit "B";
This praecipe and stipulation;
Stipulation dated December 23, 1915.

And please forward to the clerk of the United States Circuit Court for the Ninth Circuit the following exhibits, to wit: [1*]

Libelant's Exhibits Nos. 1, 2, 3, 4, 5, and 6; Claimant's Exhibit "A."

Dated September 28, 1916.

MARCEL E. CERF,
C. H. SOOY,

Proctors for Claimant and Appellant.

It is hereby stipulated and agreed that the apostles in the above-entitled libel need include nothing except that which is enumerated in the foregoing Praecipe, and that the exhibits enumerated above may be delivered to the clerk of the United States Circuit Court for the Ninth Circuit, as above requested.

Dated September 28, 1916.

IRA S. LILLICK,
Proctor for Libelant and Appellee.
MARCEL E. CERF,
C. H. SOOY,

Proctors for Libelant and Appellee.

By the Court: It is so ordered.

Dated September 28, 1916.

M. T. DOOLING,
Judge.

*Page-number appearing at foot of page of original certified Apostles on Appeal.

[Endorsed]: Filed Sep. 28, 1916, W. B. Maling,
Clerk. By Lyle S. Morris, Deputy Clerk. [2]

*In the District Court of the United States, for the
Northern District of California.*

IN ADMIRALTY—No. 15,939.

J. C. RUDBACH,

Libelant,

vs.

The Steamer "SOUTH COAST," Her Boilers, Engines, Machinery, Tackle, Apparel and Furniture,

Respondent.

Libel for Supplies, etc.

To the Honorable M. T. DOOLING, Judge of the District Court of the United States for the Northern District of California:

The libel of J. C. Rudbach, by occupation a merchant and ship chandler, against the steamer "South Coast," her boilers, engines, machinery, tackle, apparel and furniture, and against all persons lawfully intervening for their interest therein, in a cause of contract civil and maritime, alleges:

I.

That heretofore, to wit, between the 11th day of August, 1915, and the 1st day of November, 1915, the steamer "South Coast," then and there lying at the port of San Pedro, stood in need of certain supplies, provisions and other necessaries to enable her to perform her voyages upon the Pacific Ocean and else-

where, and the said J. C. Rudbach then and there, upon the orders of the owners of said vessel, and the agent of said owners, furnished certain supplies, provisions and other necessaries in this [3] State for the furnishing of said vessel, and upon the credit of said vessel, to wit, certain goods, wares and merchandise for the supplying and provisioning of said vessel at agreed prices and of the reasonable value of Twelve Hundred Fifty-three and 73/100 Dollars (\$1253.73), which said amount the owners of said vessel, and the agent of said owners then and there agreed to pay.

II.

That no part of said sum of Twelve Hundred Fifty-three and 73/100 Dollars (\$1253.73) has been paid, and that the whole thereof remains unpaid, and notwithstanding the same is due, the said owners of said vessel have neglected, and still neglect, to pay the same, or any part thereof, after demand therefor has been made.

III.

That said amount so due is a lien upon said vessel under and by virtue of the provisions of section 813 of the Code of Civil Procedure of the State of California, and of that certain provision of the Revised Statutes of the United States entitled "An Act Relating to Liens on Vessels for Repairs, Supplies or other Necessaries." (36 Stat. 604.)

AND FOR A FURTHER AND SECOND CAUSE OF ACTION LIBELANT ALLEGES:

I.

That at all of the times hereinafter mentioned

Marine Hardware Co. was, and still is, a corporation duly formed, organized and existing under and by virtue of the laws of the State of California, with its principal place of business in the City of San Pedro, said State.

II.

That heretofore, to wit, between the 11th day of May, [4] 1915, and the 31st day of August, 1915, the steamer "South Coast," then and there lying at the port of San Pedro, stood in need of certain supplies, provisions and other necessaries to enable her to perform her voyages upon the Pacific Ocean and elsewhere, and the said Marine Hardware Co. then and there, upon the orders of the owners of said vessel, and the agent of said owners, furnished certain supplies, provisions and other necessaries in this State for the furnishing of said vessel, and upon the credit of said vessel, to wit, certain goods, wares and merchandise for the supplying and provisioning of said vessel at agreed prices and of the reasonable value of Three Hundred Ninety-five and 76/100 Dollars (\$395.76).

III.

That the said owners of said vessel, and said agent of said owners, have paid no part or portion of said sum of Three Hundred Ninety-five and 76/100 Dollars (\$395.76), with the exception of the sum of Two Hundred and Fifty Dollars (\$250.00), and that the balance of said sum, to wit, the sum of One Hundred and Forty-five and 76/100 Dollars (\$145.76), and every part thereof, remains wholly due and unpaid, and notwithstanding that the same is due, the said

owners of said vessel have neglected, and still neglect, to pay the same, or any part thereof, notwithstanding that demand has been made for said payment.

IV.

That said amount so due is a lien upon said vessel under and by virtue of the provisions of section 813 of the Code of Civil Procedure of the State of California, and of that certain provision of the Revised Statutes of the United States [5] entitled "An Act Relating to Liens on Vessels for Repairs, Supplies or other Necessaries." (36 Stat. 604.)

V.

That the said Marine Hardware Co. has duly assigned, transferred, set over and delivered to libelant all of its right, title and interest in and to said claim of One Hundred Forty-five and 76/100 Dollars (\$145.76) against said vessel, and that libelant is now the owner and holder thereof.

VI.

That said vessel is now in the Northern District of California and within the jurisdiction of this Honorable Court.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE the libelant prays that process in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said steamer "South Coast," her boilers, engines, machinery, tackle, apparel and furniture, and that all persons claiming any right, title or interest therein may be

cited to appear and answer all and singular the matters aforesaid; that this Honorable Court will be pleased to decree the payment of the sum of Twelve Hundred Fifty-three and 73/100 Dollars (\$1253.73) and interest, and One Hundred Forty-five and 76/100 Dollars (\$145.76) and interest, with costs, and that said vessel, her boilers, engines, machinery, tackle, apparel and furniture be condemned and sold to pay the same; and that this libelant have such other and further relief in the premises as in law and justice he may be entitled to receive.

J. C. RUDBACH.

IRA S. LILLICK,

Proctor for Libelant. [6]

State of California,

City and County of San Francisco,—ss.

J. C. Rudbach, being first duly sworn, deposes and says: That he has read the within and foregoing libel; that he knows the contents thereof, and that the same is true of his own knowledge.

J. C. RUDBACH.

Subscribed and sworn to before me this 2d day of December, 1915.

[Seal]

C. W. CALBREATH,

Deputy Clerk U. S. District Court, Northern District
of California.

[Endorsed]: Filed Dec. 2, 1915. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [7]

*In the District Court of the United States for the
Northern District of California.*

IN ADMIRALTY—No. 15,939.

J. C. RUDBACH,

Libelant,

vs.

The Steamer “SOUTH COAST,” Her Boilers, Engines, Machinery, Tackle, Apparel and Furniture,

Respondent.

Answer.

The answer of South Coast Steamship Company, a corporation, claimant, to the libel of J. C. Rudbach against the steamer “South Coast,” in said alleged cause of contract, civil and maritime, alleges and denies as follows:

I.

Alleges that at all of the times referred to in said libel the said steamer “South Coast” was in the possession of Howard R. Levick, Jr., under a charter thereof in accordance with the terms of a charter-party, copy of which is hereto annexed, marked exhibit “A,” and is hereby made a part hereof; and all of the supplies, provisions and other necessaries referred to in said libel were ordered by said charterer, and by the terms of said charter-party the said charterer was without authority to bind said steamer therefor; all of which libelant knew, or by the exercise of reasonable diligence could have ascertained,

at the time the supplies, provisions and other necessities were furnished, as alleged in said libel.

II.

Denies that libelant furnished the supplies, provisions and other necessities referred to in Article I, of said libel, or any supplies, provisions or other necessities on the order of the [8] owners of said vessel, and/or the agent of said owners, and/or upon the credit of said vessel.

III.

Denies that the owners of said steamer "South Coast" and/or the agent of said owners agreed to pay libelant the sum of twelve hundred fifty-three and 73/100 (\$1,253.73) dollars, as is alleged in Article II of said libel, or any sum.

IV.

Denies that the amount referred to in Article III of said libel, or any amount, is a lien upon said vessel, as is alleged in said Article III, or at all.

ANSWER TO FURTHER AND SECOND CAUSE OF ACTION ALLEGED IN LIBEL.

The answer of South Coast Steamship Company, a corporation, claimant, to the further and second cause of action set forth in the libel of J. C. Rudbach against the steamer "South Coast," in an alleged cause of contract, civil and maritime, alleges and denies as follows:

I.

Alleges that at all of the times in said libel referred to the said steamer "South Coast" was in the possession of Howard R. Levick, Jr., under a charter

thereof, in accordance with the terms of a charter-party, a copy of which is hereto annexed, marked exhibit "A," and is hereby made a part thereof; and all of the supplies, provisions and other necessaries referred to in said second cause of action set forth in said libel, were ordered by said charterer, and by the terms of said charter-party the said charterer was without authority to bind said steamer therefor; all of which Marine Hardware Co., referred to in said libel knew, or by the exercise of reasonable diligence could have ascertained at the [9] time the supplies, provisions and other necessaries were furnished, as alleged in said second cause of action.

II.

Denies that said Marine Hardware Co. furnished the supplies, provisions and other necessaries referred to in Article II, of said second cause of action, or any supplies, provisions or other necessaries on the order of the owners of said vessel, and/or the agent of said owners, and/or upon the credit of said vessel.

III.

Denies that the amount referred to in Article IV of said second cause of action, or any amount, is a lien upon said vessel, as alleged in said Article IV, or at all.

WHEREFORE claimant prays that said libel be dismissed, and for its costs.

SOUTH COAST STEAMSHIP COMPANY,
Claimant,

By C. H. SOOY,
Secretary.

MARCEL E. CERF,

H. W. GLENSOR,

C. H. SOOY,

Proctors for Claimant.

State of California,

City and County of San Francisco,—ss.

C. H. Sooy, being first duly sworn, deposes and says: That he is an officer, to wit, Secretary of the South Coast Steamship Company, a corporation, claimant in the above-entitled proceedings, and that he makes this affidavit and verifies this answer for and on behalf of said corporation; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge.

C. H. SOOY.

Subscribed and sworn to before me this 29th day of December, 1915.

[Seal] FLORA HALL,
Notary Public in and for the City and County of San Francisco, State of California. [10]

Exhibit "A" to Answer.

COPY.

THIS CHARTER PARTY made and concluded in the City and County of San Francisco, State of California, on this the 19th day of June, 1915, by and

between the South Coast Steamship Company, a corporation organized and existing under and by virtue of the laws of the State of California, and having its principal place of business at San Francisco, in said State, the party of the first part, and Howard R. Levick, Jr., of the same place, party of the second part,

WITNESSETH:

FIRST. That the party of the first part for and in consideration of the covenants and agreements hereinafter mentioned, which are to be performed and kept by the party of the second part, does covenant and agree upon the chartering and letting to hire of the steamship or steam schooner "South Coast" unto the said party of the second part for the period of eighteen months from date hereof.

SECOND. That said vessel shall be employed by said party of the second part during the term of this charter party between ports and places on the Pacific Coast of North America, not north of Seattle, nor in any port or ports, nor place or places, nor provided for in the insurance policies covering the insurance to be placed upon said vessel, as herein-after provided. The cargoes carried by said vessel are to be laden and/or discharged at any dock or place where the party of the second part or his agents may direct, provided that the steamer can always lie afloat at all stages of the tide.

THIRD. The party of the first part hereby places said vessel at the disposal of said party of the second part at the port of San Francisco on this date, and the party of the second part agrees [11] that he

has thoroughly inspected the said vessel, knows her condition at the present time and that he takes said vessel by virtue of this instrument in her present order and condition, and that no representations or promises of whatsoever kind or nature have been made to said party of the second part in regard thereto, and that neither the said party of the first part nor the said vessel shall be liable for any damages, injury or loss that may occur by reason of any defects in the body, tackle, apparel, machinery or appliances of said vessel, even if the same now exists or existed before the commencement of any voyage under this charter party, or at any time during the term of this charter party.

FOURTH. The said party of the second part agrees to immediately, upon taking possession of said vessel, to tow her to the port of Los Angeles, there to install additional tankage of oil facilities according to the requirements of the United States Government, and to make in a thorough and workmanlike manner all repairs of every kind or nature that may be necessary to put the ship in a thoroughly seaworthy condition, and in accordance with the requirements of the United States Inspectors at said Port and, thereafter, during the life of this agreement to maintain said ship in as good condition, after said repairs and tankage is installed, as she will be upon the commencement of her first voyage, reasonable wear and tear excepted. Said party of the second part further agrees that the expense of installing tankage and making said repairs, and the towage

and maintenance of said ship, as hereinabove provided, shall be at his own cost and expense.

FIFTH. It is understood that this charter is a charter of the bare vessel, and that said party of the second part shall furnish the crew, pay their wages, victual them, furnish all deck and engine room and saloon stores, and supplies of every kind and nature [12] pay for all fuel, fresh water, port charges, wharfages, Customs charges, Customs fines or Government fines, pilotages, overtime of crew; agencies, commissions, Consular charges, drydocking, painting of the hull of said vessel, furnishing all lines and slings, and pay all other charges whatsoever of every nature, whether of the same kind as hereinabove enumerated or otherwise that may be incurred in or about the use of said vessel during the term of this charter.

SIXTH. The party of the first part shall have the right to appoint the master and chief engineer of said vessel, but the wages thereof shall be paid by the party of the second part. Said master and chief engineer shall be under the orders of said party of the second part as to the management of said ship, but in the event a dispute shall arise between the parties hereto, through the failure of the party of the second part to perform the conditions and agreements herein set forth, then the said master and chief engineer shall be under and subject to the orders of the party of the first part. In the event that there shall be any dissatisfaction on the part of the party of the second part with the master or engineer so appointed during the term of this charter-party,

then said party of the first part will appoint another master and chief engineer in their place and stead.

SEVENTH. It is further understood and agreed that the said party of the first part shall not be liable for injury to or death of the captain, officers, crew, passengers or other persons on or about the vessel or on the wharves, or for any breach of contract of affreightment or transportation between the said party of the second part and third parties, and all liability for any and all of said matters and things shall be borne by the said party of the second part. Said party of the second part shall further protect the [13] said party of the first part against any and all actions for injury to or death of captain, officers, crew, passengers or other person in or about the said vessel, or on the wharves, by securing in the name of the party of the first part a liability policy of insurance, and pay the premium thereon.

EIGHTH. Said party of the second part hereby accepts the said vessel, and agrees to pay for the charter and use of said vessel during the term of this Charter Party, the sum of Twelve Hundred and Fifty (\$1,250) Dollars for the first two months from and after date hereof, receipt of which sum in cash is hereby acknowledged, and to pay the sum of Five Hundred (\$500) Dollars on August 18th, 1915; Five Hundred (\$500) Dollars on September 19, 1915; Five Hundred (\$500) Dollars on October 19, 1915; and One Thousand (\$1,000) dollars per month thereafter on the 19th of each month until the sum of Fifteen Thousand Seven Hundred and Fifty (\$15,750) Dollars has been paid, including said first pay-

ment, and thirty days thereafter to pay the party of the first part the sum of Twelve Hundred and Fifty (\$1,250) Dollars, at which time and upon the payment of the said last mentioned sum, the party of the second part shall be entitled to receive from the International Banking Corporation a Bill of Sale to said vessel, which said Bill of Sale has been this day deposited by the party of the first part for delivery to the party of the second part when all of the conditions and obligations and promises and agreements herein contained upon the party of the second part to be performed have been complied with. The party of the second part agrees to make said payments promptly on the dates mentioned to the said International Banking Corporation for the account of the said party of the first part. In default of such payment, or the failure of said party of the second part within thirty [14] days after incurring the same, to discharge any debts or liabilities incurred by him which are liens on the said vessel, the party of the first part shall have the right to withdraw the said steamer from the service of the party of the second part without prejudice to any claim the party of the first part might otherwise have on the party of the second part for breach of this charter, and the said withdrawal shall not be construed as a waiver of any damages to which the said party of the first part would otherwise be entitled, but said failure to pay and said withdrawal shall be construed as a refusal of said party of the second part to continue the use of said vessel for the balance of this charter.

NINTH. The party of the second part shall not be entitled to any allowance of charter hire during the life of this charter party in the event that the said vessel shall become disabled by the breaking down of the boilers or engines or by injury or damage or breakage of any kind or nature to any part or portion of said ship or her tackle or apparel, and in this connection the party of the second part promises and agrees to blow down the said boilers of the said steamship "South Coast" at least once every forty-five days at the cost and expense of said party of the second part.

TENTH. Said party of the second part further covenants and agrees to and with the party of the first part that if said last payment above mentioned is not made, or any of the prior payments thereto have not been made, then at the option of the said party of the first part the said vessel shall be delivered unto the said party of the first part at San Francisco in as good condition as when received, reasonable wear and tear excepted, with clean holds and free from all liens and claims of every kind or description whatsoever during the term of this Charter Party, except the lien for any salvage services that may be rendered to said vessel, and that he, the [15] said party of the second part, will hold and save harmless the said party of the first part from all liens, claims or demands upon or against the said vessel that may be preferred against the said party of the first part or against the said vessel, and arising or created during the term of this charter party, except any claim for salvage services that

may be rendered to said vessel; and further, will save said party of the first part harmless from all liens, losses, damages, costs or expenses that said party of the first part may sustain or be put to in consequence of such liens, claims or demands, or in respect to any litigation arising out of or in respect thereto or connected therewith.

ELEVENTH. The party of the second part shall not have the right to assign or transfer this charter and/or option to purchase without the consent of the party of the first part.

TWELFTH. Should the steamship "South Coast," during the term of this charter party, salve and/or tow, or assist in any way in the salving or towing of any vessel in distress, or salve, and/or two or assist in salving or in towing any other property, flotsam or jetsam, the party of the first and second parts hereto are to share equally in any money or other property paid or awarded to said steamship "South Coast" by way of salvage and/or towage for such services, after payment of any award to captain, officers and/or crew; time so used to count under this charter.

THIRTEENTH. In the event that said vessel be lost during the life of this charter party, then the party of the second part shall pay the charter hire herein set forth to the party of the first part, notwithstanding such loss, it being understood, however, that the insurance money, if any, shall be paid to the party of the first part on account of said loss, and shall be deducted from the whole amount of said charter hire to be paid under this charter [16].

party, and if there be any difference then remaining, the same shall be paid by the said party of the second part to the said party of the first part. In the event that no insurance shall be collected, then said amount of said charter party shall be paid by said party of the second part to said party of the first part, notwithstanding.

FOURTEENTH. The party of the first part shall have a lien upon all cargoes and all sub-freights, and the cargo money and the sub-freight money for any amounts due under this charter.

FIFTEENTH. It is agreed that the said vessel is to be employed only in strictly neutral trade, and is not to carry explosives, contraband of war or trade to or from ports under blockade or while hostilities are eminent or in progress.

SIXTEENTH. No explosives or goods injurious to the vessel shall be shipped during the currency of this charter party.

SEVENTEENTH. The party of the second part agrees to insure said vessel against total loss for the sum of Twelve Thousand (\$12,000) Dollars, at his own cost and expense, in favor of the party of the first part, and to insure said vessel against war risks, including civil commotions, riots, strikes, etc., for the benefit of the party of the first part.

EIGHTEENTH. It is further stipulated and agreed that said party of the second part shall have the option for eighteen months after signing this charter party, of purchasing the said steamer "South Coast" for the difference between the amount of charter hire earned and paid, and the full amount

of charter hire designated in this charter party, provided always that said option to purchase shall terminate upon the failure of the party of the second part to comply with the terms and conditions **in** this charter party set forth, and each and all of them. [17]

IN WITNESS WHEREOF the party of the first part by and through its President, first thereunto duly authorized, has set its hand and affixed its official seal, and the said party of the second part has set his hand and seal this 19th day of June, 1915.

SOUTH COAST STEAMSHIP COMPANY.

By JOHN R. ROBERTS,
President.

HOWARD R. LEVICK, Jr. [18]

Due service and receipt of a copy of within answer is hereby admitted this 29th day of December, 1915.

IRA S. LILLICK,
Proctor for Libelant.

[Endorsed]: Filed Dec. 29, 1915. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [19]

Testimony Taken in Open Court.

In the District Court of the United States for the Northern District of California, First Division.

Before Hon. MAURICE T. DOOLING, Judge.

No. 15,939.

J. C. RUDBACH,

Libelant,

vs.

The Steamer "SOUTH COAST," Her Engines,
Boilers, Machinery, Tackle, Apparel and Furniture,

Respondent.

SOUTH COAST STEAMSHIP COMPANY, a Corporation,

Claimant.

Proceedings Had March 14, 1916.

Tuesday, March 14, 1916.

Counsel Appearing:

For the Libelant: IRA S. LILLICK, Esq.

For the Respondent and Claimant: MARCEL CERF, Esq., and C. H. SOOY, Esq.

Mr. LILLICK.—If your Honor please, this is an action to recover on behalf of J. C. Rudback, who is the libelant, certain supplies that are alleged to have been furnished between the 11th of August, 1915, and the 1st day of November, 1915, to the steamer "South Coast," which then was in San Pedro. Mr. Rudbach is a ship chandler at San Pedro. The amount he is seeking to recover is

\$1,253.73. As a second cause of action in the libel, there is another claim which has been assigned to Mr. Rudbach from the Marine Hardware Company, amounting to \$145.76; that also is for supplies furnished to the steamer "South Coast" at San Pedro. The other day I telephoned to [20] Mr. Sooy and asked him whether he would be good enough to permit the proof that is offered as to the Rudbach claim to apply to the claim of the Marine Hardware Company, because it would necessitate otherwise my bringing from San Pedro someone from the Marine Hardware Company; may I have that stipulation from the other side?

Mr. SOOY.—You had it over the telephone, and it is good here, Mr. Lillick.

Mr. LILLICK.—In addition to that, I have the stipulation from counsel for the claimant, the South Coast Steamship Company, that in the event that the proof we offer here is sufficient to sustain a decree in favor of J. C. Rudbach, that also as a part of the decree that may be rendered by the Court the Court may also find—I shall read from the stipulation:

"In the event that said steamer "South Coast" shall be held under such decree to be liable to J. C. Rudbach for the materials and supplies furnished to her by him, amounting to \$1,253.73, as prayed for in said libel of J. C. Rudbach, then, and in that event, and as part of the decree entered in the above-entitled cause, the said decree may, and it shall also provide for the entry of judgment against the said steamer 'South Coast' in favor of the following—

named claimants in the amounts specified opposite each of their respective names," and without reading them, there are nine other claimants, whose claims total approximately \$800 in addition to the amount sued for in the libel. I desire to file the stipulation, and dependent upon the decree that the Court shall enter in this case a decree may be entered in it for the various amounts specified in the stipulation.

The COURT.—Are you going to have this testimony transcribed?

Mr. LILLICK.—Yes, I think it will perhaps be necessary; I shall need it in the event that a brief is filed. [21]

Testimony of J. C. Rudbach, for Libelant.

J. C. RUDBACH, called for the libelant, sworn.

Mr. LILLICK.—Q. Mr. Rudbach, you are the libelant in this case? A. Yes.

Q. What is your occupation? A. Merchant.

Q. And as such merchant, what character of goods do you deal in? A. In ship chandlery supplies.

Q. Where is your place of business?

A. San Pedro, California.

Q. Do you know the steamer "South Coast"?

A. Yes.

Q. Do you know where she is registered?

A. In San Francisco—she hails from San Francisco.

Mr. LILLICK.—Will it be stipulated that she is registered in San Francisco?

Mr. SOOY.—Yes.

(Testimony of J. C. Rudbach.)

Mr. LILLICK.—Q. Mr. Rudbach, will you state whether or not, between the 11th of August, 1915, and the 1st of November, 1915, the steamer "South Coast" was at San Pedro? A. Yes.

Q. Did you during that period furnish her with any supplies, provisions or necessaries?

A. Yes, I supplied her with considerable supplies.

Q. Captain Rudbach, I hand you a bill dated San Pedro, California, August 11, 1915, for a total of \$192.53, and ask you whether or not you delivered to the steamer "South Coast" at San Pedro about August 11, 1915, the various articles mentioned in that bill? A. Yes, they were all delivered.

Q. Who ordered those goods?

A. Captain Roberts.

Q. Who was Captain Roberts?

A. He was at that time the managing owner of the "South Coast," and also captain on that trip.

Q. Do you know what official position he occupied with the [22] "South Coast" Steamship Company, whether or not he was an officer of that company?

A. He was president of the South Coast Steamship Company, I understand.

Mr. LILLICK.—We offer that bill in evidence, and ask that it be marked "Libelant's Exhibit 1."

The bill is marked "Libelant's Exhibit 1."

Q. Captain, I hand you a bill dated San Pedro, California, August 28th, 1915, amounting to \$59.75, and ask you whether or not, upon that date or about that date, you delivered to the steamer "South

(Testimony of J. C. Rudbach.)

Coast," at San Pedro, the various goods mentioned in that bill? A. Yes.

Q. I find a second sheet, with the balance of \$59.75 carried forward on it, and a total on the two bills of \$144.08, and I will ask you whether or not as to the continuation of the other bill, you furnished these supplies to the steamer "South Coast," at San Pedro, California, and whether they were delivered on the vessel?

A. Yes, they were delivered on the vessel.

Q. Upon whose orders?

A. On the captain's orders.

Q. Who was that captain? A. Captain Larson.

Mr. LILLICK.—We ask that these two as one be marked as "Libelant's Exhibit 2," and offered in evidence.

(The bill is marked "Libelant's Exhibit 2.")

Q. Captain, I hand you a bill dated San Pedro, California, September 6, for the sum of \$281.09, and ask you whether or not that bill contains a statement of the goods furnished by you to the steamer "South Coast" at San Pedro, California, on or about that date? A. Yes.

Q. Who ordered the goods specified in that bill?

A. Captain Larson.

Q. Who is Captain Larson?

A. He was captain of the steamer "South Coast."

[23]

Mr. LILLICK.—We ask that that be marked "Libelant's Exhibit 3."

(Testimony of J. C. Rudbach.)

(The bill is marked "Libelant's Exhibit 3.")

Q. Captain, I hand you a bill dated San Pedro, California, October 18, 1915, for the sum of \$157.09, and ask you whether or not about that date you delivered to the steamer "South Coast" at San Pedro, California the articles mentioned in that bill?

A. Yes.

Q. Who ordered those goods?

A. Captain Johnson.

Q. Who is Captain Johnson?

A. He was master on the steamer "South Coast" at the time.

Q. Were the goods delivered upon the vessel, do you know? A. Yes.

Mr. LILLICK.—We ask that this bill be marked "Libelant's Exhibit 4."

(The bill is marked "Libelant's Exhibit 4.")

Q. Captain, I hand you a bill dated San Pedro, California, October 18, 1915, for \$58.96, and ask you whether or not on or about that date you furnished the various articles mentioned in that bill to the steamer "South Coast"? A. Yes.

Q. Were they delivered to the vessel?

A. They were delivered to the vessel.

Q. Who ordered them? A. Captain Johnson.

Q. Who is Captain Johnson?

A. Master on the steamer "South Coast."

Mr. LILLICK.—We ask that that be marked "Libelant's Exhibit 5."

(The bill is marked "Libelant's Exhibit 5.") [24]

Q. Captain, I hand you another bill dated October

(Testimony of J. C. Rudbach.)

18, 1915, for \$361.38, and ask you whether or not you furnished the articles mentioned in that bill to the steamer "South Coast" at San Pedro about that date? A. Yes.

Q. Were they delivered on the vessel?

A. Yes, they were delivered on the vessel.

Q. Who ordered them?

A. That bill, I rather think that Mr. Mills ordered.

Q. I notice upon the bill, "O. K., Captain F. M. Johnson."

A. Yes, he O. K.'d it, it was delivered there; to the best of my recollection, I think Mr. Mills gave me that order, to deliver to the "South Coast."

Q. Who was Mr. Mills?

A. He was agent for the steamer "South Coast."

Q. Did he put this O. K. on the bill at your request, Captain?

A. Yes, I furnished him with a copy of the bill, a duplicate.

Mr. LILLICK.—I offer that in evidence as "Libelant's Exhibit 6."

(The bill is marked "Libelant's Exhibit 6.")

Q. Do you know whether the goods mentioned in that bill were delivered to the steamer "South Coast"? A. Yes.

Q. Why were goods ordered by the steamer, if you know, as to whether it was necessary for furnishing the vessel for her trip?

A. That is what I understand, it was necessary for the vessel to go on the trip, on several trips.

(Testimony of J. C. Rudbach.)

Q. Captain, referring to the bill of August 11th, which is the one O. K.'d by Captain Roberts, and amounting to \$192.53, who ordered that bill of goods?

A. Captain Roberts.

Q. Captain Roberts was whom, with reference to the South Coast Steamship Company?

A. At that time he was master of the steamer "South Coast." [25]

Mr. LILLICK.—Will you admit he was president of the South Coast Steamship Company?

Mr. SOOY.—Yes.

Mr. LILLICK.—Q. What, if anything, did Captain Roberts tell you, Captain Rudbach, as to the liability of the steamer "South Coast" for those bills?

A. Well, he came into the store and gave me these articles of goods and told me to give the best price possible, that he will pay for those goods right away; previous to that, I had furnished some goods for the repair of the steamer, the "South Coast," and he told me the other bill I would have to wait for a trip, but this particular bill of goods he would pay right away.

Q. Was Mr. Sooy at San Pedro at that time?

A. Yes.

Mr. LILLICK.—Mr. Sooy, to save time will you stipulate what your connection with the South Coast Steamship Company was at that time?

Mr. SOOY.—I think I was secretary and also attorney, and possibly part owner.

Mr. LILLICK.—Q. What, if anything, did Captain Roberts tell you about where you should get

(Testimony of J. C. Rudbach.)

your money for those goods?

A. Well, after the goods were delivered, it was late in the evening, I went over with the bills to see Captain Roberts, and he took the bills and checked them over very carefully, and then he took and O. K.'d the bills and told me to go to Mr. Mills, that he had left the money with Mr. Mills to pay me; it was then pretty late in the evening, and I think Mr. Sooy was present at the time.

Q. Then what did you do?

A. Next morning I went to Mr. Mills, there, and told him what Captain Roberts had told me, that he had left money there to pay that bill. [26]

Q. What did he say?

A. He kind of laughed and he said, "Is that what he said"? And I said, "Yes," and he said, "Well," —he jokingly said, "He is a darned liar, he didn't leave anything here."

Q. Now, subsequent to that the vessel left San Pedro on a trip? A. On a trip.

Q. When she returned, did you make any demand upon Captain Roberts for the amount of these bills?

A. Yes, I went right over to see him about it, and he made several excuses, he didn't have enough money there, that he did not have very much money left over, and he wanted to take as much money as possible to Mexico, that he might need it down there, but he would see to it I would be paid right away; I believe he mentioned that Levick and Oliver would pay the bills.

(Testimony of J. C. Rudbach.)

Q. Did you have any conversation with Captain Roberts, president of the South Coast Steamship Company, as to whom you were holding responsible for the payment of these bills?

A. Yes, I had several times conversations; he always admitted that the steamer "South Coast" would be responsible for the bills; he told me so.

Q. Captain, subsequent to that, and after all of these bills had been incurred, did you have any conversation with Captain Roberts about the payment of the bills?

A. Yes, I told him every time I saw in San Pedro, the ship was there, I said the bills were not paid yet, and I needed the money to carry on my business, and he says, "I am more anxious than you are to see those bills paid, because I am responsible for them, and I will see they will be paid, don't worry about it, you will get your money."

Q. You say he said, "I am responsible for them." Did he say anything [27] to you about the responsibility of the steamer "South Coast"?

A. He meant the steamer "South Coast."

Q. You say he meant it? A. Yes.

Q. How do you know that?

A. He said the steamer or owners of the steamer will be responsible for the bills.

Q. Are you sure he said the steamer will be responsible for the bills?

A. To the best of my recollection, yes.

Q. Captain, after the filing of the libel, had you

(Testimony of J. C. Rudbach.)

any conversation with Captain Roberts as to the liability of the steamer "South Coast" for those bills?

A. Yes.

Q. What did he say?

A. Well, he accused me, that I was hasty in libeling the ship there and adding expense, and I told him I could not wait forever to get those bills paid, and I went up to San Francisco and sent the bills to Mr. Sooy, and he told me he would not pay them, or the South Coast Steamship Company would not pay them; and he made the remark, "Well, Mr. Sooy is an attorney, and he wants his lawsuits and litigation, and Lillick is the same way; "If I had been in San Francisco," he said, "this thing would not have happened."

Q. Do you know whether at that conversation he made any remark about the liability of the steamer, itself; for the bills?

A. Yes, he said, "You were afraid you would not get your money out of the ship."

Q. Captain, do you know whether both Captain Roberts and Mr. Sooy knew that you were furnishing these supplies to the steamer "South Coast"?

A. Yes.

Q. Do you remember whether you ever told Mr. Sooy that you were intending to hold the vessel responsible for the bills?

A. No, I don't remember ever having any conversation with Mr. Sooy. [28]

Q. Do you know whether the supplies that you furnished were necessary at that time for the opera-

(Testimony of J. C. Rudbach.)
tion of the steamer "South Coast"?

A. To the best of my knowledge, I think they were necessary.

Q. Had you furnished supplies for her before?

A. Yes.

Q. Had they been paid for? A. Yes.

Q. How had you charged those other supplies?

A. To the steamer "South Coast" and owners.

Q. Would you have supplied any of these articles that you did to the vessel on anything but the credit of the vessel?

A. No. In making the first deliveries of supplies, I specially stipulated that I would not sell to anybody else but the ship and the owners.

Q. Did you ever receive any notice of any kind or character from either Captain Roberts or Mr. Sooy, before you furnished these bills, that the vessel, itself, was not responsible for them? A. No.

Cross-examination.

Mr. CERF.—Q. How soon after Captain Mills said that Captain Roberts was a darned liar, or damned liar, whatever he said, did you see Captain Roberts?

A. I should judge about a week or so, when he came back on the trip.

Q. Didn't you see him afterwards, and before he went on the trip to Ensenada?

A. Yes, I saw him before, and I saw him after.

Q. I mean after you saw Captain Mills and Captain Mills told you that Captain Roberts was a damned liar did you see Captain Roberts before he went to Ensenada?

(Testimony of J. C. Rudbach.)

A. No, he was on his way to Ensenada at that time.

Q. When Captain Roberts came back from Ensenada, did you tell him that Mills said he was a damned liar? A. No.

Q. What did you tell him about the conversation you had with [29] Mills?

A. Well, I told him, I said, "You told me to go to Mills, that you had left money there, and Mills says you didn't leave a cent there," and he kind of made excuses, he did not have very much money, and he needed to take money to Mexico, and I said, "That is no way to treat a person, trying to put one over on him."

Q. You really thought he was trying to put one over on you? A. Yes, that is what I thought.

Q. You honestly believed that he was trying to decieve you at that time?

A. Yes, while he was on the trip there; when he gave me the excuses he made after he came back, I thought it might be all right.

Q. What excuses did he make?

A. That he didn't have very much money, and he thought he might need it all in Mexico.

Q. Anything else?

A. No, I don't remember anything else.

Q. You did not lose such confidence in him that you refrained from extending further credit to him thereafter, did you? A. No.

Q. Notwithstanding what Mr. Mills told you about his being a damned liar?

A. I didn't take that very seriously, as I said; Mr.

(Testimony of J. C. Rudbach.)

Mills said that more in a joking way.

Q. Just a joke? A. Well, kind of, yes.

Q. Then, as a matter of fact, you didn't think he was trying to put something over on you; you thought that was a joke?

A. No—I did think he was trying to put one over on me.

Q. Notwithstanding you thought he was trying to put something over on you, you continued to extend credit to him to the extent of about a thousand dollars? A. Yes.

Q. Now, as a matter of fact, Mr. Rudbach, the day that Captain Roberts ordered these goods from you was by no means the first day that you had any transaction connected with the "South [30] Coast," was it? A. No.

Q. Certainly not? A. No.

Q. For a period of several months you had been furnishing goods to the "South Coast," hadn't you?

A. I don't know whether it was several months, but I suppose it was one or two months, anyway.

Q. Two months, anyway? A. Yes.

Q. Do you remember the first time that you were asked to supply materials to the "South Coast"?

A. Yes.

Q. You remember the place? A. Yes.

Q. You are sure you remember the place?

A. Yes.

Q. It was at a restaurant, was it not? A. No.

Q. Are you sure it was not? A. No.

Q. Do you remember of having met a man by the

(Testimony of J. C. Rudbach.)

name of Levick? A. Yes.

Q. Do you remember the first time you met Mr. Levick? A. Yes.

Q. Are you sure you do? A. Yes.

Q. Who presented Mr. Levick to you?

A. Mr. Mills.

Q. Where was it?

A. I think that was in a restaurant.

Q. Keep that in your mind for a minute. You were sitting down, Captain Mills was sitting down, and Levick was sitting down?

A. No, I was not sitting down.

Q. You were standing up; you were in the restaurant, anyway? A. Yes.

Q. I want you to tell the Court what Mr. Mills said to you when he presented Levick to you—about furnishing supplies and materials to the “South Coast.”

A. He didn’t say anything that I remember about supplies at that time.

Q. Just press your recollection a little bit.

A. To the best of my recollection, I was sitting in the restaurant [31] at another table, when I saw Mr. Mills over there, and I had supplied the “South Coast” with some stuff already, and I went over to Mr. Mills and asked him at what time they expected the “South Coast” to get away, and Mr. Mills said, “I don’t know; as soon as she gets ready,” and at that time he introduced me to Mr. Levick, and I told Mr. Levick, I believe, I was in the habit of, that I was supplying the ship at that time, and the con-

(Testimony of J. C. Rudbach.)

versation drifted along there about supplies that she would need when she started out, and I told him I was in a position to supply the ship with all the necessaries that he needed.

Q. Whom did you say that to?

A. I said that to Mr. Mills and Mr. Levick.

Q. Of course, there was no occasion for your saying it to Mr. Mills; you had known Mr. Mills for many years? A. Yes.

Q. You said it to Mr. Levick, then? A. Yes.

Q. Why did you say it to Levick?

A. At that time, Mr. Mills said Mr. Levick was operating the ship, and that probably he would be buying those goods.

Q. That was the time when Mills told you that Levick was operating the "South Coast"?

A. Yes.

Q. And that probably he would require some goods and some supplies? A. Yes.

Q. Now, you solicited the business, naturally, from Levick? A. No.

Q. Of course, you were not adverse to furnishing the materials?

A. I did not furnish anything to Mr. Levick.

Q. We will let the Court decide that, Mr. Rudbach. You said to Mr. Levick that you were in the business of furnishing supplies to ships? A. Yes.

Q. And you told him that you would like to furnish supplies to the "South Coast"? A. Yes.

[32]

Q. You told that to Mr. Levick? A. Yes.

(Testimony of J. C. Rudbach.)

Q. Knowing Mr. Levick was operating the "South Coast"? A. Yes.

Q. What did Mr. Levick say?

A. Mr. Levick said, "It will all depend upon the price," that he would give me a chance to figure on it.

Q. Anything else?

A. Nothing that I remember.

Q. You probably said you would make the price right; you would do as well as you could?

A. Probably I did.

Q. As a matter of fact, you were anxious for the business, were you not?

A. Yes, I was anxious for the business.

Q. How long had you known the "South Coast" at this time?

A. Well, about probably three or four months, something like that.

Q. Never had heard of the ship before that?

A. Oh, yes; I have known the ship, the "South Coast," for a number of years.

Q. That is what I mean, you have known her for quite a number of years? A. Yes.

Q. During this period of a number of years, did you know who her owner was?

A. No, not exactly.

Q. What do you mean by "not exactly"?

A. I did not know exactly who her owners were until I inquired from Mr. Mills and Captain Larson.

Q. During this period of several years, you didn't know who owned the "South Coast"?

A. No, I did not.

(Testimony of J. C. Rudbach.)

Q. You did not find that out until you asked Captain Mills and Captain Larson? A. Yes.

Q. Whom did you ask first, Mr. Mills or Captain Larson? A. Mr. Mills.

Q. When did you ask him that?

A. As soon as the "South Coast" arrived down in San Pedro for repairs.

Q. That was the time that Mr. Mills gave you a little order [33] for \$5 or \$6 worth?

A. No, he gave a considerably bigger order.

Q. A bigger order than that, was it?

A. Yes. I could relate the conversation.

Q. It was the first order anyway?

A. Yes, he gave me the first order the following day; he did not give me any order at that time; I went over there to solicit the order, but he did not give me any order at that time, but he telephoned to me an order the next day or the day following.

Q. This is what I am getting at: The day that you went over to solicit business from Mills, Mills told you that the South Coast Steamship Company was the owner of the "South Coast"? A. Yes.

Q. There is no question about that, is there?

A. No. I don't remember whether he said the "South Coast Steamship Company," but he said Roberts and Sooy—he mentioned Mr. Sooy's name—are the owners.

Q. Roberts and Sooy? A. Yes.

Q. He did not say anything about any company at all?

A. About the South Coast Steamship Company?

(Testimony of J. C. Rudbach.)

Q. Yes.

A. I can't remember that; I have no recollection; I could not swear; he may have said it and he may not.

Q. But you do remember that he said Roberts and Sooy? A. Yes, I do remember that.

Q. That was the day that you solicited the business from Mills? A. Yes.

Q. You did not get any business, though, from him, did you? A. No, not that day.

Q. You never had met this man Levick up to that time, had you?

A. I did not meet him at that time; I did not meet him until a week or a couple of weeks later. [34]

Q. A couple of weeks later was the first time you ever met him? A. Yes.

Q. That was the first time that you knew that Levick was in charge of the operation of the boat?

Mr. LILLICK.—Objected to upon the ground the witness has not testified that Levick was in charge of the boat, and assuming a fact not in evidence.

The COURT.—That was not the exact language he used, but he did say that—what was it they told you, that Levick was operating the boat?

A. Yes, that he was going to operate the boat.

Mr. CERF.—At this conversation at the restaurant, Mr. Mills told you that Mr. Levick was the man who was going to operate the boat?

A. Yes.

Q. And then you turned to Levick and told him

(Testimony of J. C. Rudbach.)

that you would like to furnish the materials and supplies? A. Yes.

Q. Now, this is the situation, isn't it, Mr. Rudbach: Before you met Levick, Mills had told you, you believe, that Roberts and Sooy were the owners of the boat? A. Yes.

Q. And when you did meet Levick, you were told by Mr. Mills that Levick was the man who was operating the boat? A. Yes.

Q. Mr. Mills did not tell you, as far as you remember now, that the owner of the boat was a corporation, did he?

A. No, I don't believe that he ever told me.

Q. Who was the first man that told you that the owner of the "South Coast" was a corporation?

A. Captain Larson.

Q. Are you sure it was Captain Larson?

A. Yes.

Q. You are absolutely positive about that?

A. That is the best of my recollection, positive almost.

Q. If you remember it, you must remember the fact of his saying so and perhaps you remember where it was he told you? [35]

Mr. LILLICK.—Objected to as argumentative, and a compound question.

Mr. CERF.—I will withdraw it.

Q. Do you, as a matter of fact remember that Captain Larson did tell you that the owner of the "South Coast" was the South Coast Steamship Company?

(Testimony of J. C. Rudbach.)

A. Yes, and that Captain Roberts was the president.

Q. Do you remember where that was, when he told you that? A. That was in my store.

Q. Do you remember when it was?

A. Well, he was up there giving me an order for some goods, and that is the time I asked him who owned this vessel.

Q. There is no doubt about that, either?

A. No.

Q. He told you the owner of the vessel was the South Coast Steamship Company, and that Captain Roberts was the president? A. Yes.

Q. And he told you that on the day he ordered some goods?

A. Yes, he ordered some goods that day.

Q. You are sure about it? A. Yes.

Q. Which goods were they?

A. Well, they are not goods that are in these bills; that was goods that were bought previously, which were paid for.

Q. You are sure of that? A. Yes.

Q. These goods have all been paid for?

A. Yes.

Q. Who paid you? A. Mr. Mills.

Q. Do you know where he got the money to pay you for them?

A. I rather think he got it from the Pacific Warehouse and Storage Company; it was a check.

Q. You know what I mean, Mr. Rudbach?

Mr. LILLICK.—I object to that insinuation of

(Testimony of J. C. Rudbach.)
counsel, if your Honor please. [36]

Mr. CERF.—I beg your pardon, Mr. Rudbach, and Mr. Lillick's. I will withdraw that. Let me ask you: Do you know whether or not the money that he gave you to pay you for the goods that were ordered by Larson was the money which he got from Levick?

A. Well, I don't know, but perhaps he did.

Q. Just tell me what your best judgment is in the matter.

A. It is my judgment, I rather think he did, but I would not swear to that that he did; I don't know whether he did.

Q. Upon what do you base your judgment in that regard? What makes you think he got the money from Levick?

A. In fact, I don't think he did get it from Levick.

Q. What do you think about it?

A. I rather think he got it from somebody else on notes.

Q. Whose notes?

A. I don't know; I never saw them; just at different times in conversation, I got this opinion, but I don't know a great deal about it; I don't know very much.

Q. Your judgment is that it was Levick's money that paid you for the goods?

A. No, it is not my judgment that it was Levick's money; I think it was somebody else's money.

Q. Were you mistaken a moment ago when you said it was your judgment that it was Levick's money? A. I was mistaken if I said so.

(Testimony of J. C. Rudbach.)

Q. What position did Mr. Mills occupy with respect to this ship, do you know?

A. He was acting agent for the steamer "South Coast."

Q. Did he tell you so at the time that you had the conversation about Levick? A. No.

Q. When did he tell you so?

A. He told me when the steamer first arrived at San Pedro.

Q. Did he tell you for whom he was acting as agent?

A. For the steamer "South Coast." [37]

Q. Did he tell you he was to operate the "South Coast"? A. Yes.

Q. What did you say?

A. I went over there, as I said, to solicit business, as I understood that Mr. Mills was agent for the steamer "South Coast"; for that reason I went over to him; when I went over, he told me then that Captain Roberts and Sooy had asked him to look after the boat, and he told me that Levick and Oliver were going to operate her, and that Sooy had written him not to have any bills go on the ship's account, that Levick and Oliver will pay those bills; I told him it was immaterial to me who paid those bills, but I would not sell my goods to the ship any other way than charging them to the ship or her owners, and if he did not want it that way I would not deliver any goods.

Q. Now, as a matter of fact, did Mr. Mills at that

(Testimony of J. C. Rudbach.)

time read to you or show to you a letter that he had from Mr. Sooy? A. No.

Q. He did not?

A. No. He pulled out, to the best of my recollection, from the pigeon-hole a letter, but he didn't give it to me to read, and he didn't read it before me; I didn't know what the contents were.

Q. But he told you that Mr. Sooy and Captain Roberts, the owners of the vessel, insisted that if any materials or supplies were furnished to the vessel, they should be furnished on the credit of the people who were going to operate her, Levick and Oliver?

A. Yes.

Q. He told you before you ever furnished a cent of material to that vessel?

A. Yes, but he withdrew that the next day.

Q. But he told you that Captain Roberts and Sooy had told him that?

A. That Mr. Sooy had written to him.

Q. That Levick and Oliver had a charter on the vessel? A. Yes.

Q. Did he show you a copy of the charter-party?

A. No.

Q. Did you ever see a copy of the charter?

A. Not until the [38] other day, in Mr. Lillick's office.

Q. Did you ever ask Mills to show you a copy of the charter-party? A. No.

Q. Did you ever ask Captain Roberts to show you a copy of the charter-party? A. No.

(Testimony of J. C. Rudbach.)

Q. Did you ever ask Mr. Lillick to show you a copy of the charter-party? A. No.

Q. Did you ever ask Mr. Sooy to show you a copy of the charter-party? A. No.

Q. Did you ever ask Captain Larson to show you a copy of the charter-party? A. No, but—

Q. (Intg.) Did you ever ask anybody?

Mr. LILLICK.—I submit that the witness should be allowed to finish his answer.

The COURT.—Yes.

A. I asked Captain Larson whether he knew who the ship was chartered to, and he told me no, he didn't know, that he didn't have a copy of the charter-party.

Mr. CERF.—Q. Was that upon the same occasion that he told you that Captain Roberts was the president of the South Coast Steamship Company?

A. Yes, that was the same occasion.

Q. That was before any of the goods were ordered for which the bills are now in court? A. Yes.

Q. Then, as a matter of fact, Mr. Rudbach, the first time that you knew that Levick, or Levick and Oliver were interested in the operation of this steamship was not the day that you met Levick in the restaurant, but the day that you went over to Captain Mills to solicit the business? A. Yes.

Q. It was on that day that you knew that the operation of the steamship was in the hands of the charterers, Levick & Oliver?

A. Yes, that is what I understood from Mr. Mills, that Levick [39] & Oliver had chartered the ship.

(Testimony of J. C. Rudbach.)

Q. Did you understand who were to be the agents of these charterers Levick & Oliver?

A. No; I did not make any further inquiries; I didn't know who Levick was, anything at all.

Q. This is what I want to explain: If you went to Mills to get the business, and Mills told you that the ship was under charter to Levick & Oliver, or to Levick, and you persisted in soliciting the business from Mills, then you considered, did you not, that Mills was the agent of Levick & Oliver?

Mr. LILLICK.—Objected to upon the ground it is not binding on the libelant, and irrelevant, immaterial and incompetent.

Mr. CERF.—My object entirely in asking that question is to find out what was in the mind of the libelant.

The COURT.—The objection will be overruled.

Mr. CERF.—Q. Do you understand the question?

A. Yes. I wish you would repeat the question.

(Last question repeated by the reporter.)

A. No, when I went to Mills, I did not know that he was agent.

Q. I understand—

Mr. LILLICK.—Pardon me. The witness is not through with his answer. Let him finish.

A. (Continuing.)—All that I knew was that he was agent for the steamer, and I went to solicit business from the steamer, consequently I went to him, and after we talked things over, it would be necessary for me to explain, to state the conversation at that time; it might be more clear.

(Testimony of J. C. Rudbach.)

Q. Go on, give us the conversation.

A. When I spoke to Mr. Mills at that time and told him I would not sell the goods to anybody else, to the charterers, Levick & Oliver, or whoever [40] it might be, that I would sell it to the ship, and hold the ship and owners responsible, Mr. Mills told me that Mr. Sooy and Mr. Roberts could not expect otherwise, that anybody would furnish goods to anybody that they did not know, and that the ship will have to be responsible for them. At any rate, he said, "I won't do anything until Roberts gets here; I expect him here in a day or so, and I will tell him to come up and take the matter up with you." Then the next day, or the day after, he telephoned to me to send over some oakum, I believe the carpenters were there working, and he said, "Charge this to the ship, and if Captain Roberts wants it otherwise, he can take it up with you," and that is the way the business started.

Mr. CERF.—Q. Mills told you to charge it to the ship? A. Yes.

Q. You are sure about that? A. Yes.

Q. That was the first order you got?

A. That is the first order I got.

Q. So, with respect to the first order that you got, you are perfectly sure that you depended exclusively upon the ship? A. Yes.

Q. No doubt at all about that?

A. No doubt at all.

Q. Don't you remember that Mr. Mills, himself, guaranteed payment of that first bill?

(Testimony of J. C. Rudbach.)

A. He might have; yes.

Q. Don't you remember that he did?

A. I don't remember; I don't know.

Q. You don't remember that he guaranteed payment of that, but you know he said to charge that to the ship? A. Yes.

Q. And you looked to the ship for your payment?

A. Yes.

Q. You must remember he didn't guarantee it, don't you?

A. I could not swear to it; he might have guaranteed that, or [41] said if Roberts did not want to pay for it, he would pay for it, or something to that effect, but I don't remember.

Q. You don't remember anything like that?

A. No.

Q. But you do remember that he told you about charging it to the ship? A. Yes.

Q. Do you remember the first time you met Mr. Sooy?

A. It was somewhere about that time, when the steamer was getting ready to go to Ensenada.

Q. Have you a picture of Mr. Sooy coming into your shop?

Mr. LILLICK.—That is objected to, if your Honor please.

The COURT.—Ask him the question. It does not make any difference whether he has a picture of him, or not.

A. I believe Mr. Sooy was in the store.

(Testimony of J. C. Rudbach.)

Mr. CERF.—Q. Was that the first time you ever met Mr. Sooy?

A. That is the first time I ever met him, that I ever saw him.

Q. The first time you ever saw him was in your store, was it not? A. Yes.

Q. Do you know what time of day or night it was?

A. No, I can't remember, I don't know; I remember he was in there with Captain Roberts, to the best of my recollection.

Q. Do you remember whether it was before or after you had delivered the goods to the "South Coast" this first bill which has been introduced in evidence here? A. I rather think it was before.

Q. Let me see if I cannot refresh your recollection in that regard: Don't you remember that Mr. Sooy came to your shop, and that the goods were all packed, ready to be sent over to the "South Coast"? A. Yes, maybe they were.

Q. Don't you remember it, Mr. Rudbach?

A. Yes, I think they were. [42]

Q. That is a fact, isn't it? A. Yes.

Q. The goods were there in your store, and Mr. Sooy came over? A. Yes.

Q. Do you remember what Mr. Sooy said to you about these goods?

A. He didn't say anything to me.

Q. Are you sure about that? A. Positive.

Q. I am going to put this question to you: I want to know if on that occasion, you and Mr. Sooy and Captain Roberts being present, Mr. Sooy did not say

(Testimony of J. C. Rudbach.)

to you, in substance or effect, "Now, Mr. Rudbach, in order that there may never be any misunderstanding about these goods, I want you to know that you are not to deliver them to that ship unless you are looking to Levick & Oliver for their payment"?

A. Absolutely not.

Q. You are sure about that?

A. I am positive about that. I never spoke a word to Mr. Sooy; I do not believe, all the time he was in San Pedro, to my recollection—yes, I did; I think the only words I ever spoke to him were when I had a little lunch down in the cabin aboard the "South Coast"; I never have been introduced to Mr. Sooy to this date, and I didn't know who he was; I know he was along with Captain Roberts, but I didn't know that was Sooy, or the Sooy that Mr. Mills had reference to until I asked Captain Larson, and he told me that it was Mr. Sooy, a partner of Captain Roberts.

Q. Captain Larson told you it was Mr. Sooy?

A. Captain Larson; I didn't know that was Mr. Sooy when he was in with Roberts at the time; I think there was some conversation that I had with Captain Roberts about some rope that he had bought in San Francisco, that I told him I could have sold him as cheap in San Pedro as he bought it in San Francisco, and paying the freight down there, and he says, "I didn't know you had two coils of such large rope in stock, and Henry is a very good friend of [43] mine, and I ordered from Henry."

Q. Anything else at that time that was talked

(Testimony of J. C. Rudbach.)

about? A. Not that I remember.

Q. You don't remember anything else was talked over at all on that occasion? A. No.

Q. What did Captain Roberts and Mr. Sooy come into your store for?

A. I don't know; probably Captain Roberts came in there and put a little addition to the order, or something of that sort.

Q. Now, these goods were all ready to go on the ship?

A. Yes, and as is very often the case, they forget something and come in and order a little more.

Q. You have no recollection of anything that was done, at that time, except the fact that you chided Roberts for having ordered rope from Henry instead of you?

A. Yes, it kind of impressed me, having had quite a little bit of business there, that I felt I ought to have it.

Q. When did you first find out that that rope had come down there?

A. I saw it aboard the steamer.

Q. When?

A. Over at the "South Coast," over across the bay.

Q. I want to know when it was you saw that rope on the "South Coast"?

A. Captain Roberts, whether he telephoned to me or asked me that morning to go over there, I don't remember, but he wanted me to look over the life-boats, which were just about to be inspected, and to

(Testimony of J. C. Rudbach.)

go over there and look over the life-boats and see that there was everything that was necessary to equip the life-boats to pass inspection, an oar or such a thing, so he wanted me personally to go over there and see about these things, and I went over, and that is the time I found the rope there, and at that time he gave me some order, and he asked me also to get an electrician for him there, saying, "Old man, you will do [44] that for me, and I will remember you," and so forth.

Q. Was that before he had given you the order for these goods?

A. It may be it was before or it may be it was after; it was about that time; I couldn't remember.

Q. Was it before?

A. It was just about that time.

Q. As a matter of fact, how many days before these goods were delivered aboard the ship did Captain Roberts order them?

A. I guess he ordered them one day and I guess they were delivered the next day, if not the same day.

Q. Have you any recollection in that regard, any positive recollection?

A. I am positive it was not very long.

Q. Between the order and the delivery?

A. Yes. It was not very long between the order and the delivery. I think they came in there in the evening and gave me the order, and it was delivered the next day.

Q. That is your recollection of it? A. Yes.

(Testimony of J. C. Rudbach.)

Q. And it was before you got that order from Captain Roberts that you saw this rope aboard the ship, was it?

A. Yes; it must have been; I was over there.

Q. At the time that Captain Roberts gave you the order, he came over to your store and gave it to you?

A. Yes.

Q. You did not chide him at that time for having failed to give you the order for the rope, did you?

A. No.

Q. It was not until the next day, at least the next night, that he came with Mr. Sooy, that you talked to him about the rope?

A. Well, that might have been the next night, and it might have been the day before; I don't know; I couldn't remember now the exact date or the day; I know it was just about that time.

Q. You know that you did not talk to him about the rope when Mr. Sooy was there, don't you?

A. Yes.

Q. You know that he gave you the order before Mr. Sooy was there, [45] don't you, because it was already made up?

A. I don't know whether Mr. Sooy was in San Pedro at that time.

Q. Before he was in your store?

A. He might have been in San Pedro, I don't know.

Q. But in your store, I am talking about; as I understood your testimony, Captain Roberts and

(Testimony of J. C. Rudbach.)

Mr. Sooy came into your store casually one evening, and went—

Mr. LILLICK.—I object to the word “casually.”

Mr. CERF.—Came into your store one day?

A. Yes.

Q. And all you remember of the conversation was that you complained, or rather suggested to Captain Roberts that he might have given you the order for the rope, instead of to Henry? A. Yes.

Mr. LILLICK.—The witness also testified that he was absolutely positive that Mr. Sooy did not say at that time, “You are not to look to the vessel for these goods.” Counsel has put into the witness’ mouth by this question the fact that is all he remembers. The witness’ attention has not been called to the other statement he made; he has absolutely denied that Mr. Sooy made that statement. I think the question is misleading.

Mr. CERF.—Q. You remember, Mr. Rudbach, that when Captain Roberts and Mr. Sooy came into your store, that the only thing that was discussed was the rope?

A. There might have been other things discussed.

Q. But that is the only thing you remember?

A. That is the only thing I remember with regard to; he might have spoke of little things, or something of that sort.

Q. But you cannot remember that? A. No.

Q. You know that at this time that Mr. Roberts and Mr. Sooy were there, when you talked about the

(Testimony of J. C. Rudbach.)

rope, that was subsequent [46] to the time that Captain Roberts had given you the order?

A. It might have been, I don't know.

Q. You told me, did you not, a little while ago, that the order was all made up on the floor of the store ready to be delivered when Captain Roberts and Mr. Sooy came in.

A. I didn't mean to say that the stuff was ready in there; you told me that the stores were made up; I said they might have been; I don't remember. They might have been made up at that time; I don't remember exactly whether that was said before he gave me the order or after, but it was just about that time.

The COURT.—The important thing is the fact that Mr. Sooy told him this, whether it was before the order was given, or before the goods were delivered.

Mr. CERF.—Q. Captain Rudbach, will you tell me how close to the "South Coast" your store—how close to the place where the "South Coast" was lying is your store? A. It is quite a distance.

Q. Quite a considerable distance, is it not?

A. Yes, it is across the bay.

Q. As a matter of fact, you have to take the ferry boat to go over there, don't you? A. Yes.

Q. You have to go over a sand spit? A. Yes.

Q. And it is a rather inconvenient thing for a big man to go from where the "South Coast" was lying?

A. It is quite a considerable walk, it is a board walk.

(Testimony of J. C. Rudbach.)

Q. You have to take the ferry boat, also?

A. Yes; that is just a little trip across the channel.

Q. Are you just as positive now as you were a little while ago, that Mr. Sooy did not—

A. (Intg.) I am absolutely positive, I do not believe I ever exchanged a word with Mr. Sooy outside, as I said, of that cabin, when we were having a little [47] lunch.

Q. Then you did have lunch with him in the cabin of the "South Coast"?

A. Yes, that is that evening that he left for Ensenada.

Q. That was the evening of the night that they left for Ensenada? A. Yes.

Q. That was after your goods had been delivered?

A. Mr. Sooy made some casual remark about sailors getting drunk, and it being hard to get a crew, but there was nothing mentioned about business either way.

Q. When Sooy came into the store with Roberts, didn't Roberts present his friend Sooy to you?

A. No.

Q. Didn't introduce him at all?

A. No, that is what I said before, I have never been introduced to this day to Mr. Sooy; I didn't know who Mr. Sooy was.

Q. By lunch, you mean something to eat?

A. Something to eat; it was late in the evening when I brought these bills over there, and Roberts says, "Have you had something to eat," and I said, "No," and he said, "Go down and get something to

(Testimony of J. C. Rudbach.)

eat"; they were having supper, and I went down and had a little to eat.

Q. That was the time you talked with Mr. Sooy?

A. Mr. Sooy was sitting at the table at the time.

Q. These payments that you got for the goods that were paid for, and that were delivered to the "South Coast," were payments made in the form of checks? A. Yes.

Q. By Captain Mills in every instance?

A. Mr. Mills.

Q. Mr. Mills in every instance? A. Yes.

Q. Mr. Rudbach, did you ever present a bill to the South Coast Steamship Company for any of these goods?

A. I presented them to Captain Roberts, the president of the South Coast Steamship Company, and he told me to bring it over to Mr. Mills. [48]

Q. Beside the bill that Captain Roberts put his name on and told you to take to Mr. Mills, did you ever present any bill to Captain Roberts?

A. Outside of this, no; he told me to leave it to Mr. Mills; the captain told me to bring it over to Captain Mills and he will take care of it.

Q. So that outside of the bill you gave to Captain Roberts to put his name on, and which he did put his name, and which he told you to take to Mr. Mills for payment, you never presented any bill to Mr. Roberts? A. No.

Q. Nor Mr. Sooy? A. No.

Q. Nor to anybody else connected with the South Coast Steamship Company?

(Testimony of J. C. Rudbach.)

A. Except their agent, Mr. Mills, and the captain.

Q. The captain and Mr. Mills?

A. Yes. I didn't know where the South Coast Steamship Company's headquarters were.

Q. You didn't know that? A. No.

Redirect Examination.

Mr. LILLICK.—Q. Captain Rudbach, are you absolutely positive that Mr. Sooy did not tell you that the vessel would not be responsible for these bills?

A. I am absolutely positive of that.

Q. You are under oath; this is a very serious thing.

A. Well, I am absolutely positive that I never spoke to Mr. Sooy until that time in the cabin aboard the "South Coast," as I told you; I was never told by anybody that the ship would not be responsible for them, excepting that conversation with Mr. Mills, at the first time, and later on, Captain Larson spoke about it, made reference to it.

Q. Mr. Sooy and Captain Roberts did come in your store that evening there at San Pedro, did they?

A. I don't know whether it was the evening or afternoon; it was about that time they came in there, and Captain Roberts gave me some more orders, [49] or I believe there was something he came in for, and I talked to him.

Q. Did you have a conversation with Mr. Sooy at all on that occasion? A. Not at all.

Q. You recognize Mr. Sooy sitting here at the table as the gentleman who was in there with Captain Roberts? A. Yes.

(Testimony of J. C. Rudbach.)

Q. What were Mr. Sooy and Captain Roberts doing upon that vessel then, Captain?

A. Well, I did not see very much of Mr. Sooy on the vessel there, and several times I went over; whenever I saw Captain Roberts, he was going around there and fixing up things, and ordering hands around like naturally a man connected with a ship would do, an owner.

Q. What did Captain Roberts tell you they were going to do with the steamer on that trip to Ensenada?

A. They would not tell me anything; they did not tell me anything.

Q. What were they doing, if anything, upon the chartered vessel going down there, if they were not interested in it?

A. I don't know; it was kind of kept secret; they did not tell me what they were going for; they told me they were going on a short trip and would be back in about a week.

Q. The vessel was being repaired at that time, was she not? A. Yes, she was completed.

Q. Who was superintending these repairs?

A. Captain Larson, he was around there, and other times Captain Roberts was there, he was superintending it, as I seen whenever I went over there.

Q. By "superintending," what do you mean? What was Captain Roberts doing about the repairs?

A. Of course, I was not over very much; occasionally I had to go over there, and I saw him ordering hands around and telling them what to do, the car-

(Testimony of J. C. Rudbach.)

penter, the men that were working on board.

Q. Do you know whether Mr. Sooy had come down with the "South [50] Coast" when she was towed down? A. How is that?

Q. Do you know whether he came on the steamer "South Coast," or whether he came down by train?

A. No, I did not see Mr. Sooy for a long time afterwards, until she was almost ready to go to sea; as I said, it was a day or so before she went to Ensenada.

Q. At any rate, Mr. Sooy and Captain Roberts went out with her on that trip down to Ensenada?

A. I could not swear to that; I think they did.

Q. And Captain Roberts at that time was captain of the vessel, as well as being the president of the steamship company? A. Yes.

Q. You were asked upon your cross-examination about a conversation that you had with Mr. Mills when counsel asked you about a letter, and Mr. Mills calling your attention to a letter; you testified that you had not had that letter read to you; in one of your replies you said, he withdrew that notice the next day. What do you mean by that?

A. Well, he said that he would not order any goods until Captain Roberts came down and he had seen him, and he would take it up with me himself.

Q. He told you that he had received a letter from Mr. Sooy?

A. Yes, he had received a letter from Sooy, saying they didn't want to have anything charged to the ship, and when I explained to him I would not sell any goods otherwise unless they were charged to the

(Testimony of J. C. Rudbach.)

ship and owners, he said, "Mr. Sooy and Mr. Roberts could not expect anything otherwise," but he said, "I won't order anything at this time, but Captain Roberts will be down in a day or so, and he will take it up himself"; the next day he telephoned to me to send over oakum, and to charge it to the ship, and if Roberts wanted to do otherwise he could take it up with me.

Q. What, if anything, do you know about Mills having acted [51] there as the representative of Captain Roberts or Mr. Sooy on the steamer "South Coast"?

A. Well, Mr. Mills told me that Sooy had written to him and told him to look after the "South Coast."

Q. Did he while the "South Coast" was at San Pedro look after her and see about the repairs?

A. Yes, sometimes he ordered the goods, he telephoned, and other times the captain came in and ordered them; other times Captain Roberts ordered them.

Q. And he told you that Roberts and Sooy had asked him to look after the boat, didn't he?

A. Yes.

Q. After the return of the "South Coast" from Ensenada, when you saw Captain Roberts about the bills that he said he had left the money with Mills to pay you for, what did he say to you about the liability of the steamer "South Coast" for that bill?

A. Well, he said that I need not worry, that would be all right, I would be paid for it, that he was at that time short of money, and he did not have any

(Testimony of J. C. Rudbach.)

money to pay for it, but it would be all right, it would be paid.

Q. Did you charge Captain Roberts with the trick he had played upon you in telling you that the money would be at Mills' for you? A. Yes.

Q. What did he say?

A. "Well," he says, "old man, you don't understand these things; you see I did not have very much money to go down to Mexico, and I thought probably I had better take it along with me, I might need it, and you will get paid, I will see that you get paid for it," or that Levick & Oliver will pay it.

Q. What did Captain Roberts say, if anything, to you, about going to Ensenada?

A. He did not tell me anything about going to Ensenada.

Q. Did you hear anything about a cargo of ties that would be [52] brought back?

A. I believe Mr. Mills spoke something about a cargo of ties, that the ship was going to Mexico and would bring back ties.

Q. Didn't you ask Roberts what he was going down to Mexico for—did you say anything to him about that at all?

A. No, I don't remember of ever asking him anything; I could understand that he did not want to say anything regarding his trip, and I didn't question him very much; I thought it was none of my business to know where the ship was going.

Q. Do you remember an occasion when Captain

(Testimony of J. C. Rudbach.)

Larson ordered some goods; do you remembed Captain Larson ordering some goods? A. Yes.

Q. You remember having the conversation with Roberts at that time in which you told him you were looking to the ship for your payments? A. Yes.

Q. Do you remember saying at that time, "Captain, what will I do if the ship is lost"?

A. Captain Larson was present at the time, and she was going away, just about ready to go away, and I told Captain Roberts at that time, I said, "Captain, all I have to look to is the ship for my pay, and in case of the ship going away and anything happens, you would not feel like going down in your pocket, perhaps, to pay my bill, and I would like to know whether the ship is insured," and he held up his hands and he said, "Captain, don't worry about it, old man, I will look to that; she is well insured, and you are well protected."

Q. Captain Roberts knew at that time that you had furnished all of these goods to the vessel, didn't he?

A. Yes—not all of them.

Q. Up to that time, that had been furnished up to the time of that conversation? A. Yes. [53]

Q. Now, after that time, Captain Rudbach, and after all of your bills that are here had been rendered and the materials furnished did you have any conversation with Captain Roberts about payment of those bills?

A. Yes; as I said here, after I had libeled the ship and got back to San Pedro, I met Captain Roberts there and he accused me of being hasty in libeling

(Testimony of J. C. Rudbach.)

the ship, that I needn't worry that I would not get my money; he says, "You are afraid you won't get your money"; he says, "The ship is good for it"; that is the remark he made, and that Mr. Sooy was an attorney, and all the attorney wanted was litigation and lawsuits.

Q. Do you remember Captain Larson coming in to order some additional supplies from you, and any conversation you had with him then about the "South Coast" being good for payment?

A. That is the time he came back from Mexico; he came in there and he asked me whether the "South Coast" was still good for a little paint, that he needed to paint the ship—if the "South Coast's" credit was good to paint the vessel.

Q. What did you say?

A. I said, yes, it was all right, I would let him have it.

Q. Was that conversation after the conversation that you had with Captain Roberts about the vessel being good for the bills? A. Yes.

Q. Do you remember when the repairs were being made on the vessel to enable her to pass the United States Inspection at San Pedro? A. Yes.

Q. Do you remember going out to the vessel yourself? A. Yes.

Q. While those repairs were being made?

A. Yes.

Q. Who was there representing the South Coast Steamship Company, do you know?

(Testimony of J. C. Rudbach.)

A. Captain Roberts.

Q. Did Captain Roberts at that time order any goods from you? [54] A. Yes.

Q. Are they part of the bills that have been rendered here?

A. Not in these bills, no; that was part of the bills that have been paid.

Q. That have already been paid? A. Yes.

Q. Captain, do you remember when you first came to San Francisco with these bills before and filed this libel? A. Yes.

Q. Do you remember whether or not upon that occasion you called upon Mr. Sooy and Captain Roberts and asked them to pay these bills?

A. I called on Mr. Sooy, and Captain Roberts, I believe, was out of town at the time.

Q. Refreshing your recollection by that, Captain, you testified upon cross-examination that you had never made a demand upon the South Coast Steamship Company. Are you still of that opinion?

A. I meant at the time that the bills were made out—I thought the attorney had reference to that.

Q. You did, however—

A. I did, however, before I gave you the case, go up to Mr. Sooy's office, in fact two or three times, regarding this matter, and he refused to pay; he told me "These bills that are O.K.'d by Captain Roberts, why, we will pay, but the other we will not have anything to do with."

Q. He said, "We will pay that"?

(Testimony of J. C. Rudbach.)

A. Yes; he meant the South Coast Steamship Company.

Q. Has any part of these bills been paid?

A. No.

Q. And the amount mentioned here is due you for these goods? A. Yes.

Recross-examination.

Mr. CERF.—Q. I understood you just a moment ago to say to Mr. Lillick that Mr. Mills told you that the ship was under charter, and that Levick & Oliver were the charterers, and that Captain Larson spoke about the ship not being liable—that is [55] what I understood you to say.

Mr. LILLICK.—He did not say the ship would not be liable.

Mr. CERF.—I just caught it as he said it. What did Captain Larson tell you in that regard?

A. After the ship was loaded ready for sea, he came in and ordered some stores.

Q. Captain Larson, I am talking about.

A. Yes, Captain Larson, that is who I mean; he came in and ordered the stores, and he says, "Now," he says, "Lewick & Oliver will pay for this"; well, I said, "That is immaterial, whatever company pays for it, you understand this, that everything that goes on board that ship is charged up to the ship and owners, and I hold them responsible for it." "Well," he said, "in that case, don't send anything on board until I am satisfied that those things will be paid for," and I held those goods there in the store ready to put on the ship for six or seven days.

(Testimony of J. C. Rudbach.)

Q. You held them until Mr. Mills gave you assurance, that he had gotten—

A. Mr. Mills gave me assurance over the telephone —Captain Larson gave me assurance, he said, "I got a letter from Mr. Mills and he said he later got notice of the money, and he would take care of these bills."

Q. As a matter of fact, didn't Mr. Mills tell you that? Didn't you go to Mr. Mills' house with Captain Larson when Mr. Mills was ill and had his leg strapped up?

A. Yes, but he didn't tell me that at the house; he says he didn't have any assurance or have any funds to pay these bills, and he didn't guarantee anything at that time I was at his house.

Q. Was that the time that Larson told you to hold up the goods until they got word?

A. Yes, there were several days that I saw Mills and Larson, and he was down there trying to get the ship away, trying to get some funds.

Q. Until finally Larson told you that Mills had told him that [56] he had arranged about some notes?

A. Yes.

Q. Did he tell you that those notes were given for Levick? A. I don't know.

Q. Did he tell you that McDonald had given him a note?

A. I don't know who they were given by; the only thing I know is I called Mills up over the 'phone before he had the letter, and they were waiting, I believe, to get these stores on board, and I called him up there and asked him if everything was all right, and

(Testimony of J. C. Rudbach.)

he said all right, he had given a letter to Captain Larson; in fact, I believe Captain Larson was with me at the time; more for company's sake, we kept together there; I didn't have any interest in Levick & Oliver; the distinct understanding was that all of the goods I sold was to the ship and owners; it was only to accommodate Larson that I went with him, and he called up Mills over the 'phone, and Mr. Mills told him it was all right, and we went across the bay, and I believe somebody handed him a letter.

The COURT.—Q. Mr. Mills told you he had a letter from the owners that the ship was under charter and no credit should be given to the ship?

A. Not to charge anything to the ship.

Q. You then said that you would not furnish anything on those terms? A. Yes.

Q. You would not send anything aboard the ship unless the owners were responsible? A. Yes.

Q. Mr. Mills said, "If that is the case you had better take it up with Captain Roberts who will be here in a few days"?

A. Yes, he said he would see me in a few days.

Q. Captain Roberts came and ordered some goods?

A. Yes.

Q. Did you tell him that you had had this conversation with Mills and you wanted to know just where you stood in the matter? [57]

A. I don't remember asking him particularly that. I took it for granted that he was the owner there, and ordered the goods there, and it was all right there, that Mills had told him.

(Testimony of J. C. Rudbach.)

Q. You did not ask him then?

A. I did not. I have no recollection that I did ask him.

Q. You furnished the goods?

A. I furnished the goods thinking that Mills had told him. I had other things to take care of.

(A recess was here taken until two P. M.) [58]

AFTERNOON SESSION.

Mr. LILLICK.—The libelant will rest, your Honor.

Testimony of C. H. Sooy, for Claimant.

C. H. SOOY, called for claimant, sworn.

Mr CERF.—Q. Mr. Sooy, are you familiar with the seal of the South Coast Steamship Company?

A. I am, yes.

Q. Are you familiar with the signature of John Roberts? A. I am.

Q. The signature of Howard R. Levick, Jr.?

A. Yes.

Q. I hand you what purports to be a charter-party dated the 19th of June, 1915, made by the South Coast Steamship Company as owner, and Howard R. Levick, Jr., as charterer, and I call your attention particularly to the seal and signatures appearing on the last page, and ask you if that seal is the seal of the South Coast Steamship Company? A. It is.

Q. I ask you if that signature is the signature of John Roberts? A. It is.

Q. And the signature of Howard R. Levick, Jr., is that his signature? A. Yes.

(Testimony of C. H. Sooy.)

Mr. CERF.—We offer in evidence, if your Honor please, this charter, and ask that it be marked Claimant's Exhibit "A," and if I am permitted I will read one paragraph of the charter-party to your Honor, and I will call your Honor's attention to the fact that it is provided by the terms of the charter-party, and particularly the fifth paragraph thereof:

"It is understood that this charter is a charter of the bare vessel, and that said party of the second part shall furnish the crew, pay their wages, victual them, furnish all deck and engine room and saloon stores and supplies of every kind and [59] nature; pay for all fuel, fresh water, port charges, wharfages, customs charges, customs fines or Government fines, pilotages, overtime of crew; agencies, commissions, consular charges, drydocking, painting of the hull of said vessel, furnishing all lines and slings, and pay all other charges whatsoever, of every nature, whether of the same kind as hereinabove enumerated or otherwise that may be incurred in or about the use of said vessel during the term of this charter."

Mr. LILLICK.—Q. Do you offer that portion of it, or all of it?

Mr. CERF.—I offer it all; I read particularly that part to his Honor; there are other provisions of a similar character.

(The charter is marked Claimant's Exhibit "A.")

Q. Now, will you state, Mr. Sooy, whether or not the steamer "South Coast" referred to in this charter-party, was delivered to the charterer therein named? A. Yes.

(Testimony of C. H. Sooy.)

Q. At what time, with respect to the date of the charter-party?

A. On the day the charter-party was signed.

Q. Was the vessel ever returned to the owner?

A. Yes.

Q. When?

A. Sometime, I think, in November of that same year.

Q. 1915?

A. Yes; it might have been in October, I judge, but my recollection is it was November.

Q. Mr. Sooy, did you have occasion to go to San Pedro in the month of August, 1915, at the time the "South Coast" was lying there? A. I did.

Q. Did you on that occasion meet Captain Roberts? A. Yes.

Q. On that occasion, did you meet Mr. Rudbach, the libelant in this proceeding? A. Yes.

Q. Will you please state when and where you met Mr. Rudbach?

A. It was the day before the "South Coast" cleared for Ensenada; she cleared San Pedro harbor about two o'clock in the morning [60] of Friday, the 13th.

Q. Of August? A. Of August.

Q. 1915, last year?

A. 1915; I think it was on the 12th, either the 11th or the 12th, I am inclined to think it was the 12th that I met Mr. Rudbach.

Q. Where?

A. At Mr. Rudbach's store in San Pedro.

(Testimony of C. H. Sooy.)

Q. Who was present on that occasion?

A. Captain Roberts.

Q. Who else? A. Myself and Mr. Rudbach.

Q. Will you recount, please, the conversation that you had with Mr. Rudbach on that occasion?

A. In substance, I can; I cannot, of course, give the exact words of it, but I said to Mr. Rudbach, "You have furnished an order of goods here to the steamer 'South Coast.' " He said, "Yes, here they are"; they were laid out in a run-way, a sort of alley-way in his store there, as I recall it, between two streets, and I said, "Do you understand from Captain Roberts that the ship is not responsible for these bills?" He said, "Yes, but Captain Roberts tells me that he is going to pay me out of the money that he gets from Levick." I said, "Captain Roberts is the president of the South Coast Steamship Company, and I am the secretary and attorney of it, and Captain Roberts has just told me," and that was the way Captain Roberts introduced me to Mr. Rudbach, and I said, "I do not want any question at all about this bill or about any other bills that may be incurred on behalf of the 'South Coast,' and I have come here particularly to tell you that."

Q. Was anything further said?

A. Then Roberts said that Levick would be in San Pedro on that afternoon, with the understanding that he was to turn over the money to Roberts, and that Roberts would pay Mr. Rudbach.

Q. That was stated at that time, was it?

A. That was stated at that time. [61]

(Testimony of C. H. Sooy.)

Q. As a matter of fact, do you know whether Captain Roberts at that time occupied some position on the vessel?

A. He was the captain of the ship.

Q. Employed by whom? A. By Levick.

Q. For what purpose, for what voyage?

A. For the purpose of going to Ensenada and return.

Q. Just for the one voyage?

A. Just for the one voyage.

Q. Do you know, Mr. Sooy, whether or not the steamship "South Coast" was under charter from Levick & Oliver to the Western Pacific Steamship Company at that time to make this particular voyage to Ensenada and return?

Mr. LILLICK.—Objected to as irrelevant, immaterial and incompetent; we are not concerned with that; if we have anything to do with this, we have the charter-party.

The COURT.—Yes, is it not material.

Mr. CERF.—I think the objection is well taken, so far as the competency of the question is concerned, because the agreement is in writing.

The COURT.—I think it is well taken as far as materiality is concerned.

Mr. CERF.—This is the only point I wish to make, if your Honor, please: I want to show that Levick & Oliver, the charterers, had made a contract with the Western Pacific Steamship Company for this voyage, and that contract, itself, provided that Captain Roberts should be the master of the vessel for that partic-

(Testimony of C. H. Sooy.)

ular trip, in order to indicate that Captain Roberts' capacity at that time with respect to the "South Coast" was not as an owner, or not as an agent of the owner, but as master of the ship.

The COURT.—This contract would not establish that.

Mr. CERF.—Q. I will ask you this question, Mr. Sooy: [62] You say that you were the attorney and secretary of the South Coast Steamship Company? A. Yes.

Q. Were you a director at that time? A. Yes.

Q. Did the South Coast Steamship Company have any interest whatsoever in the voyage of the "South Coast" from San Pedro to Ensenada and return?

Mr. LILLICK.—Objected to on the ground it is incompetent; we are bound, if at all, by the acts of these officers of the company there, and whether they were *interest* in the voyage is no concern of ours; whether they were interested in the voyage they were making is another thing.

The COURT.—It is not except on the theory that the libelant is undertaking to hold them because of some interest they might have had in the voyage. I do not think that is the case at all.

Mr. CERF.—That is the precise reason of the question; I was apprehensive of the position that Mr. Lillick would take that Captain Roberts ordered these goods as an officer of the South Coast Steamship Company; the position we take is he ordered these goods as master of the ship, and in a capacity entirely different from that.

(Testimony of C. H. Sooy.)

The COURT.—I think the Court understands that.

Mr. CERF.—Has your Honor ruled upon the objection?

The COURT.—The objection will be sustained.

Mr. CERF.—Q. Mr. Sooy, at the time the "South Coast" left San Francisco after this charter had been made, did you have any conversation with the master of the ship, namely, Captain Larson, concerning the notification of all persons furnishing supplies and materials to the ship, that the ship was under charter, and that the materialmen and so forth must look to the charterers for their compensation? [63]

Mr. LILLICK.—Objected to upon the ground it is hearsay, not binding upon us, not in our presence.

The COURT.—That might be true, but it is of some interest to know whether he took the precaution to advise them. The objection will be overruled.

Mr. CERF.—Will you answer the question?

A. Yes; I did.

Q. Will you state what you said to Captain Larson?

A. When the ship left here in tow on Sunday, bound for San Pedro, where she was to be repaired, I called Captain Larson aside on the dock and told him that regardless of what happened, that I did not want any bills incurred for which the ship would be responsible, and that I wanted him to particularly notify anybody that he was acting for Levick, Oliver & Levick, as we always say—they were really co-partners, but Levick was the charterer, it was taken

(Testimony of C. H. Sooy.)

in his name—to notify everyone personally that the ship was not responsible for any bills. That was on Sunday. Then, afterwards, in August, I went to San Pedro, and when we got back from Ensenada I gave Captain Larson written instructions that the ship was not to clear the dock until all of the bills, whatever they were, were paid. I understood from Mr. Mills, that some bills had been incurred, and I, of course, knew that Mr. Rudbach had furnished this bill of \$290 odd, something of that kind, and I gave Captain Larson written instructions, as I remember it, wrote the letter out in longhand just before I left the ship, and before I came to San Francisco, and Captain Larson assured me that he would carry out my instructions in that regard, and I believe that he did.

Q. Mr. Sooy, was Mr. Mills ever the agent or the employee of the South Coast Steamship Company?

Mr. LILLICK.—Objected to upon the ground it is not the best evidence; if he was the agent, it would be in writing; the testimony of the witness to that effect would not be binding. [64]

The COURT.—It would be the best evidence if it was in writing; suppose no agency had been created?

Mr. LILLICK.—Is the agency in writing?

Mr. CERF.—There never was any agency.

A. No, he was not.

Q. Do you know whether or not Mr. Mills was acting respecting the "South Coast" at San Pedro?

A. Well, Mr. Mills, in order to make it perfectly clear, originally had to do with the chartering of the

(Testimony of C. H. Sooy.)

"South Coast" to Levick from the South Coast Steamship Company; he and Captain Roberts were acquainted, friends, and Mr. Mills had become interested in the chartering of the "South Coast" because the Santa Fe Railroad Company wanted to bring ties out of Mexico; and Mr. Mills, the purchasing agent of the Santa Fe Railroad Company, was a friend of his, and he mentioned the matter of the chartering of the "South Coast" to Levick and also to Roberts. Now, when we finally consummated the charter, it was understood, at least I understood that Mr. Mills was to act for Levick and Oliver in and about the repairs of the ship and taking care of her at San Pedro; just what the relationship between Mr. Mills and Mr. Levick or Levick & Oliver was, I don't know, but I knew that he was going to act for them.

Q. Did you, soon after the vessel left San Francisco for San Pedro, write Mr. Mills a letter in connection with the accounts? A. I did, yes.

Q. I hand you a letter and ask you whether or not that is a copy from your files of the letter that you wrote to Mr. Mills on that occasion?

A. Yes, that is the letter.

Q. It was signed, of course, by you? A. Yes.

Mr. LILLICK.—Objected to upon the ground it is not binding upon us, if your Honor please.

The COURT.—Let me see it.

Mr. CERF.—It is offered for the same reason that the instructions [65] were offered.

The COURT.—It is already in evidence that this matter was conveyed to the libelant; the letter, itself, was not read to him, but he saw a letter taken from a pigeon-hole, and the fact of the charter and the conditions as to holding the ship responsible for any goods was made known to him. The objection will therefore be overruled.

(The letter is marked Claimant's Exhibit "B" and is as follows:—)

**Plaintiff's Exhibit "B"—Letter, June 26, 1915, Sooy
to Mills.**

"June 26, 1915.

"Mr. E. A. Mills.

Pacific Wharf & Warehouse Co.,
East San Pedro, Cal.,

Dear Sir:—

Under the provisions of charter and option given by the South Coast Steamship Co., the owner of the S. S. 'South Coast,' to Mr. Levick, the repairs now being made to this vessel are to be made for the credit of Mr. Levick and not upon the credit of the vessel. This is also true as to any supplies that may be furnished the vessel or on account of any labor furnished thereto. Carrying out the agreement with Mr. Levick *all* of the persons, firms or corporations furnishing supplies, labor or materials to said vessel are to be notified either by you or ourselves that they cannot hold the vessel for any supplies, labor or materials furnished the said vessel. Upon receipt of this letter you will therefore please notify

(Testimony of C. H. Sooy.)

all persons furnishing said supplies, labor or materials, to the vessel that they must look to Mr. Levick and not to the vessel for payment of same. Please notify me in answer to this that you have done as requested, and let me know the names of the people whom you have notified. I would rather, on account of relationships, have you notify these people than for us to write the letters, because if we wrote it it might in some way injure Mr. Levick, and this [66] I do not wish to do. I have just been informed by Mr. Levick and Mr. Oliver that he has arranged for insurance on the vessel after repairs are made. Thanking you in advance for this courtesy, I am,

Very truly yours,"

Mr. CERF.—Q. Mr. Sooy, Mr. Rudbach has stated that a few days before this libel was filed, he called at your office in connection with the payment of this account. Will you please recount what transpired at that time between you and Mr. Rudbach?

A. Well, I think Mr. Rudbach called two or three times, just which time it was I do not remember, but the substance of all the conversations was this, Mr. Rudbach made a demand upon me to pay this bill, and I said, "Why, Mr. Rudbach, you have no claim against this ship; you know as well as I do that I myself told you that the ship was not to be responsible." "Well," he said, "I want to get my money, and I have you, because I billed it 'South Coast and owners.'" I said, "It don't make any difference what your bill is, that doesn't control," and then I cited his Honor's ruling in the 'Ray' case, and one or

(Testimony of C. H. Sooy.)

two other cases, and he said he didn't believe that was the rule, that a ship was always responsible, regardless of who operated her, or anything of that kind, that the supplies went aboard the ship, and he wanted the money. I said, "Mr. Rudpach, Mr. Levick or Levick & Oliver have given up this ship, and they have left a whole lot of debts, and possibly a lot of people are—money is owing to a lot of people, that Levick & Oliver ought to pay; the only chance they have to get out at all is to sell the ship, and I have agreed with Levick & Oliver that if they can sell the ship even now, even after I had to put up the money to pay the crew, that I advanced personally, by the way, that if they could sell the ship out and get us the price that we had figured on in the [67] first place, which I think was \$17,500, they will get enough money out of it so that they can pay these debts, they can sell it, and I do not like to see you go to the expense of bringing litigation which in my opinion will result in your failing to get a judgment." "Well," he said, "I have you on that, because I have billed it 'South Coast and owners,' " and with that he went out of the office; he wanted his money right away, and I told him we would not pay the bill, but that if Levick & Oliver could find a purchaser for the ship, that then I would agree that we would take what we had originally agreed to, and not take any advantage on account of the \$10,000 or \$11,000 of repairs and tanks that they had put aboard the ship, we would take just what money was coming to us out of it, and they could take the bal-

(Testimony of C. H. Sooy.)

ance"; I think the price they paid for the ship—

Q. That is not material.

A. I do not think so.

Q. On that occasion, or any other occasion, did Mr. Rudbach ever deny that you had told him in his store in San Pedro that the ship was a chartered ship, and that he must look exclusively to the charterers for the payment of this bill?

A. Certainly not. Mr. Rudbach and I had a perfectly clear understanding on that on two occasions.

Cross-examination.

Mr. LILLICK.—Q. You are quite sure about that, are you?

A. There is no question in my mind about it.

Q. Realizing you gentlemen are absolutely opposite in your testimony as to that? A. Yes.

Q. You are an attorney, Mr. Sooy? A. Yes.

Q. Have been for a great many years? A. Yes.

Q. You knew when you were in Los Angeles that Mr. Rudbach had furnished those supplies that were lying upon the floor of his store?

A. They had not been furnished. [68]

Q. They were lying there, and you knew they had been ordered by Captain Roberts? A. Yes.

Q. You knew also if this question came up there would be some question about the liability of the vessel? A. No, I do not think so.

Q. Why did you tell him, then—you say that the vessel should not be held responsible?

A. I will tell you why I told him; all the other

(Testimony of C. H. Sooy.)

bills had been ordered by Mr. Mills, so I understood at that time, and when I arrived in San Pedro that morning Captain Roberts said that he had ordered the stores from Rudbach, and I immediately saw, not knowing then that Mr. Rudbach, had been notified by Mr. Mills or anybody else, I immediately saw that since Roberts was the president of the South Coast Steamship Company, and also the captain of the "South Coast" for that voyage, that the ship might be held liable, since the captain, under that statute, was presumed to have authority to bind the ship, and I asked Roberts whether he had made that clear to Rudbach, and he said, "Oh, he understands it." I said, "Does he understand it clearly?" So we went from the "South Coast" across the sand spit and across the ferry and clear up to Rudbach's store for the express purpose of telling Mr. Rudbach just what I have told you, and I explained to him that she was a chartered vessel, and that under the terms of the charter-party would not be responsible for the bills; that was my purpose in going there. I do not want to make an argument upon it.

Q. Feeling the responsibility of the vessel in that respect, Mr. Sooy, why didn't you serve a written notice?

A. I don't know that the serving of a written notice occurred to me at all.

Q. Did you know the rule laid down in the "Milford" case is, where the owners stood by and saw material and supplies furnished to a vessel, that they

(Testimony of C. H. Sooy.)

are responsible, because the inference is that [69] they authorize them?

A. If they stand by and make no objection that probably would be true.

Q. You understand that is the rule in that case?

A. I do not recall the facts of that case now; I don't know that I recall the rule.

Q. Why did Captain Roberts O. K. these bills, do you know?

A. Roberts O.K.'d the bills as master of the ship.

Q. And also as president of the South Coast Steamship Company, did he not?

A. I don't know whether he did or not as president, I am sure.

Q. Captain Roberts was the president of the steamship company at that time?

A. He was, and I was the secretary.

Q. Did you not know, as a matter of fact, Mr. Sooy, that Captain Roberts subsequently, not once but many times, said that the vessel was responsible for these goods?

A. Well, of course, Mr. Lillick, what legal determination of the liens against the "South Coast" might have been arrived at by Captain Roberts, I don't know, but I just say that if Captain Roberts decided in his wisdom that there was a lien created, that it would have carried weight in my mind in determining that legal proposition.

Q. That is not an answer to my question: Didn't you know, Mr. Sooy, that as a matter of fact Captain Roberts, not only once, but repeatedly, told Rud-

(Testimony of C. H. Sooy.)

bach that the vessel was responsible for the bills?

A. No, I do not. And I would be greatly surprised to learn that he did say any such thing, because I had instructed Captain Roberts before he left for Los Angeles to call upon Mr. Mills immediately upon his arrival there and get a list of the bills, and to notify everyone that that ship was not responsible for those bills.

Q. Mr. Sooy, you had had, as the attorney for the North Pacific [70] Coast Steamship Company, a similar experience at one time with a steamer known as the "Eureka," did you not?

A. Four times, I think.

Q. And in your wisdom then, as an attorney, you published a notice, did you not, in a newspaper? Why did you not do it in this case?

A. For the simple reason, when we offered testimony of the publication of that—no, when you offered in the Ray case to introduce the "Guide" and some other newspaper publications, it was ruled out by the Court.

Q. And that was why you did not publish a notice in the newspapers in San Pedro?

A. I might say, however, that without any knowledge upon my part, the newspapers were full of the "South Coast's" sailing and all of that sort of thing, together with more or less complete detailed statements of what she was going to do and where she was going.

Q. And that her owner or owners, Captain Roberts

(Testimony of C. H. Sooy.)

and Mr. Sooy were going with her to Ensenada, did they not?

A. No, they did not mention our names.

Q. Are you sure about that?

A. Not any accounts that I saw.

Q. Mr. Sooy, do you recall having said upon one occasion that even if the South Coast Steamship Company and the steamer should be held responsible for these bills, that the steamer and the company would be ahead anyway by reason of the repairs that were made upon her at San Pedro?

A. Well, I don't remember making the statement, Mr. Lillick.

Q. It is a fact, is it not, that the repairs that were made upon her totaled, with the tanks that were put upon her, something like \$10,000?

A. I think about \$11,000.

Q. Did you know at that time, and upon the 13th of August, 1915—is that right—Friday, the 13th of August, 1915?

A. Yes, that is the day, in the dark of the moon.
[71]

Q. Did you know that the vessel had against her a number of claims for supplies that had been furnished? A. On the 13th of August?

Q. 1915, when she cleared for Ensenada.

A. No, I do not believe that the vessel had any claims against her then, other than the claims which your office represented, and which Mr. Frank's office represented. You mean under the Levick & Oliver regime; is that what you mean?

(Testimony of C. H. Sooy.)

Q. So far as I know, we are only concerned with the question of her supplies during the time between August and October.

A. But you are asking me whether there are any claims against the vessel.

Q. At that time for supplies furnished to her, and during the time that the charterers were putting on these repairs, which amounted to \$11,000, you say?

A. I do not think there were any claims against the vessel at all at that time.

Q. Then, the charterers had paid you promptly, had they, for the charter hire due?

A. No. You are talking about one thing, and I am talking about another. I understand your question to be whether or not there were any claims against the vessel.

Q. In August, of 1915, on Friday, the 13th, when she cleared for Ensenada.

A. That is, you mean claims by persons who might have furnished supplies to her?

Q. Yes, Mr. Sooy.

A. No, there were no claims against the vessel at that time.

Q. Not even of Captain Rudbach?

A. I consider that Captain Rudbach did not have any claim against the vessel.

Q. And at that time you made no remark to anyone that you remember that the South Coast Steamship Company has \$11,000 on account of charter hire or repairs that these gentlemen have made [72] upon her, and we are not going to lose anyway?

(Testimony of C. H. Sooy.)

A. I don't remember of making any such remark as that; if you will particularize or get down to telling me who I made it to, probably I did, but I have not any distinct recollection of making any such remark as that now.

Q. On Friday, the 13th of August, 1915, were the charterers of the steamer "South Coast" in arrears in their charter hire?

A. I am inclined to think they were.

Q. How long had she been under charter to them?

A. Since the 26th of June.

Q. And the charter hire specified in the charter is \$1250, as I remember it, for the first month?

A. I don't remember what it is.

Q. And \$500 a month after the first two months, is it not?

A. The charter speaks for itself; I cannot remember off-hand.

Q. Just prior to August 13, 1915, the vessel had been at San Pedro, had she not?

A. Yes, she went from here down there.

Q. She was towed down by one of the McCormick steamers? A. Yes.

Q. When she arrived there, the charterers placed upon her \$11,000 in betterments, did they not?

A. No, they did not; they put on tanks on her deck, which were, of course, no use to the vessel in the lumber trade, that she had been engaged in prior to that time.

Q. But \$11,000 had been expended by the charterers upon the vessel, had it not?

(Testimony of C. H. Sooy.)

A. I do not think that is true, in betterments.

Q. Call it betterments, or tanks, or what you please, the charterers of the steamer "South Coast," up to Friday, the 13th of August, 1915, expended \$11,000 on that vessel, did they not?

A. No, I don't think they had expended that much.

Q. How much had they expended? [73]

Mr. CERF.—If you Honor please, I have not made any objection to the entire line of testimony, but I cannot see that it will assist your Honor in any way to any determination of this matter; I think it is entirely immaterial.

The COURT.—I will take the testimony; the objection is overruled.

A. I cannot tell you, Mr. Lillick, I don't know. I know there was—when I got back from Ensenada, I went over the matter with Mr. Mills, and it strikes me there was about \$3000 owing then.

Mr. LILLICK.—Q. What did you testify a few minutes ago about that \$11,000?

A. Well, I testified that the total amount that they had spent in and about the operation of the vessel, and all that sort of thing, was about \$11,000; the major portion of that, I think, was in repairs and supplies furnished to the vessel, but I have no accurate knowledge of it, except what I have been told.

Q. Why did you go to Mr. Mills about that?

A. For the reason that I did not want anyone else to have any indebtedness or to furnish any supplies to the vessel until Levick had financed himself.

Q. During the absence of Captain Roberts in San

(Testimony of C. H. Sooy.)

Diego, to whom did you look to there for the interests of the South Coast Steamship Company?

A. Captain Larson.

Q. To no one else? A. To no one else.

Q. Why should you write to Mr. Mills as you did

A. Because as I understood it Mr. Mills was to have direct charge of the repairs, and checking out the money for Levick in the repairs of the vessel.

Q. And you had no other connection with Mills than that? A. No. [74]

Q. And you looked solely to Captain Larson, did you?

A. I looked solely to Captain Larson. I do not say that Mr. Mills was not very friendly to us, and that he would probably have accommodated us in anything we wanted done, but there was no business relationship between us as I remember.

Testimony of E. A. Mills, for Claimant.

E. A. MILLS, called for claimant, sworn.

Mr. CERF.—Q. What is your full name, Mr. Mills? A. Eugene Allen Mills.

Q. Where do you reside? A. San Pedro.

Q. What is your occupation?

A. I am superintendent of the Pacific Warehouse & Storage Company.

Q. You know Mr. Rudbach, of course?

A. Yes, quite well.

Q. You know Captain Roberts, don't you?

A. Yes.

(Testimony of E. A. Mills.)

Q. Mr. Sooy? A. I do.

Q. The Steamship "South Coast"? A. Yes.

Q. Mr. Mills, do you remember the occasion that the "South Coast" arrived at San Pedro after she had been chartered to Levick, in tow—do you remember when she arrived there in tow? A. I do.

Q. When did you first have any conversation with Rudback thereafter concerning the furnishing of supplies to the "South Coast"?

A. I think it was either the day she arrived, or the day after.

Q. Was that before or after you had seen Captain Roberts? A. It was after.

Q. I will ask you first about the interview you had with Captain Roberts, the first interview you had with Captain Roberts after the "South Coast" arrived at San Pedro in tow; just tell us what it was that Captain Roberts told you?

A. Well, he confirmed the terms of what you call the charter-party, which I [75] consider was more in the nature of a sale, a contract for sale, in which we discussed for some little time previous that we were going to sell this boat to Levick & Oliver, on terms, on a contract, and they were to stand the expense of the repairs; in other words, Captain Roberts told me they had no money to repair her with; in fact, when I brought up the question of a sale, he even mentioned one or two other boats that he thought they had better sell, because they could not put this boat in condition for service. So, when

(Testimony of E. A. Mills.)

he finally consummated the deal, the charter, sale, or whatever you want to call it of the boat, if I remember right, I was in San Pedro about Wednesday, and either the day following or the day following that Captain Roberts came down as pilot on one of the Luckenbach boats; they dock at our wharf, and he came up to the office immediately and he told me they had closed this deal, which I knew, which I had already heard from Levick, that the deal had been closed, and he said that the boat wanted to be put in repairs immediately, but that the purchasers were going to be responsible for the obligations of the vessel from that time on; the day before, or else that very same day, I am inclined to think it was that same day, in talking with Captain Rudbach on the 'phone, he happened to be the first one that I had talked to in regard to supplies, I told the captain that we wanted a few supplies for the ship, but that I did not know *why* was going to pay the bills, but that I would be personally responsible for that one order, that one particular order I would be responsible for personally.

Q. How much did that order amount to, if you remember?

A. I do not suppose it amounted to over \$5 or \$10, enough to keep five or six caulkers busy; that is what they were doing, caulking the ship; I don't believe it would be over \$10; it [76] might have been; at any rate, not much over that. At any rate, the following day Mr. Levick arrived on the scene, and he made his arrangements with me, and with Captain

(Testimony of E. A. Mills.)

Larson for the payment of the bills; as I understand it, the arrangement was that Captain Larson was to be given cash to take care of the crew; they had a little crew; any indebtedness that I wanted to pay for was to be covered by a draft by me on his bank in San Francisco, which is customary in our dealings with any ship owner; so, along those lines, I immediately told Captain Larson he could go ahead and the chances are, I told Captain Rudbach he could go ahead and furnish these supplies, that I was satisfied that proper arrangements had been made. Captain Roberts told me as soon as he got there that we would have to look to Levick & Oliver for the money, and that is the reason I would only guarantee this first bill, and I waited until I saw Mr. Levick before I authorized any further orders.

Q. In other words, you would not authorize any further expenditure until Levick had financed the bills?

A. I did not dare. We act in these matters, it is more of an accommodation service, it is a service for which we do not receive any reward; it is the same way as Captain Rudbach does, I guess, in furnishing supplies to a ship, if a man wants some little fresh vegetables or meat, something that he does not carry, he will go and get it for them, and we do those same things for our customers, but I did not dare obligate either myself or the company on a proposition that I was entirely in the dark on. [77]

Q. And you remained in the dark until Levick arrived, did you?

(Testimony of E. A. Mills.)

A. As I say I do not recall whether he arrived that day or the following day. I think I could find that out by reference to the data that I have.

Q. Then what transpired between you and Levick?

A. We talked the matter over and made this arrangement and went to lunch, and at lunch time we met Captain Rudbach; I introduced him to Captain Rudbach and I am almost positive I introduced him as the new owner of the "South Coast"; the fact that he was really a charterer did not appeal to me because I thought that I had been instrumental in making a sale, not a charter, and I introduced him as the new owner.

Q. Now, there were supplies that were furnished and work that was done on the ship, the "South Coast"? A. Yes.

Q. What capacity did you occupy in those operations, what position?

A. More in the nature of a disbursing agent; I don't know as you would call it a disbursing agent, because I really had no connection whatever with either the former owners or the new owners, except that in our dealings down there we handle a great many financial transactions of any note whatever; in other words, a vessel may be loading cargo at our wharf and we will advance the railroad freight charges for the charterers or for the vessel's owner, with the expectation that when the vessel clears she will settle up all of her indebtedness with us; these matters may run along indefinitely. In this instance I was not sure of the financial responsibility of Mr.

(Testimony of E. A. Mills.)

Levick and made him make an arrangement with me whereby I could draw on him at San Francisco; after that arrangement was made then I did not hesitate to go ahead and authorize the repairs to go *head*.

Q. After these arrangements were made what relationship existed between you and Levick? [78]

Mr. LILLICK.—We have no objection to the witness stating the facts, but his conclusion as to this relationship we object to. Just tell what you did and what Levick did?

A. I paid bills for Levick & Oliver and drew drafts against their San Francisco account to cover it.

Mr. CERF.—Q. How about ordering goods, ordering supplies and materials and that sort of thing?

A. I don't know but one or two items that I ordered after that first order I gave Captain Rudbach; in fact in San Pedro, the only thing that I remember we ordered something up in Los Angeles, a valve, or something from Crane & Company over the telephone, and I ordered that for the boat; outside of that there might have been one or two other items that I did, but I don't recall if there were; I am pretty positive about that.

Q. Now, do you remember having received a letter from Mr. Sooy concerning the payment of bills?

A. Yes, that was several days after the boat had arrived.

Q. Several days after?

A. That was after Captain Roberts had told me the same thing.

Q. Captain Roberts told you the same thing?

(Testimony of E. A. Mills.)

A. I also received the same information from Mr. Levick that Levick & Oliver were to be responsible for the bills.

Q. After you received this letter from Mr. Sooy, did you call again Captain Rudbach's attention to the fact that he must look for his compensation to Levick & Oliver?

A. Yes. Not with particular reference to that letter, but you must understand that these dealings ran over a period of 3 or 4 months, and during that 3 or 4 months I probably had 15 or 20 conversations with Captain Rudbach, in every instance of which I made it plain to him I had to get my money from Levick & Oliver before I could spend any money. I do not mean to say that upon receipt [79] of that letter that I immediately went and told him the circumstance, because I had already told him that until Levick had satisfied me in regard to the money end of it I could not order any more goods, but I did on numerous occasions tell him that I was getting this money from Levick & Oliver.

Q. What did you do after the vessel was delivered at San Pedro; did you do anything in regard to her for the South Coast Steamship Company; that is to say, the people who are referred to as Sooy & Roberts?

A. I never knew there was such a concern as the South Coast Steamship Company until sometime after she arrived there; my understanding was that Captain Roberts and Mr. Sooy owned the vessel jointly; the South Coast Steamship Company as a

(Testimony of E. A. Mills.)

corporation so far as I was concerned did not exist until sometime afterwards; it was Captain Roberts and Mr. Sooy as partners.

Q. After Levick appeared upon the scene of action did you act at all for Captain Roberts and Mr. Sooy in connection with the "South Coast"?

A. No, I did not. You mean in any capacity whatever?

Q. In connection with the "South Coast"?

A. No, I did not.

Q. Now, when the ship returned from Ensenada did Mr. Sooy have any conversation with you concerning his desire that the ship should be tied up at the dock until everybody was paid?

A. Well, I do not recall the exact conversation. I do remember that when the ship returned from Ensenada or possibly before—no, it must have been after—it must have been after the boat returned from Ensenada, either the day after or—I would not want to say whether it was just before or just after, but it was while Mr. Sooy was there in connection with the Ensenada trip, he came in the office and asked me how many bills there were outstanding against the ship that Levick & Oliver had contracted [80] for, and at that time I told him there were in the neighborhood of about \$3,000 worth of purchases; I am not sure but what there was a little over \$3,000; it might have been a little under.

Q. Who asked you that? A. Mr. Sooy.

Q. Now, you had several conversations I believe you have testified to here with Captain Rudbach con-

(Testimony of E. A. Mills.)

cerning payment of his bills? A. Oh, yes.

Q. On any one of these occasions was the name of a person who was to pay him mentioned?

A. In every instance.

Q. Who was that person? A. Mr. Levick.

Q. Was the name of Roberts or Sooy ever mentioned between you and Captain Rudbach in connection with the payment of these bills?

A. Well, not by me of course in the sense that they were to pay the bills—the names of both Captain Roberts and Mr. Sooy were mentioned quite frequently in connection with the affairs of the vessel.

Q. But I am talking about the payment of the accounts?

A. Not in regard to the payment of the bills.

Q. The person who was always talked of as being the one who was to furnish the money to pay the bills was Levick?

A. Absolutely, so far as I was concerned, he was the only one.

Q. I am talking about the conversation you had with Mr. Rudbach?

A. That is what I am talking about.

Cross-examination.

Mr. LILLICK.—Q. You did not tell Mr. Rudbach that Levick had chartered the boat, did you?

A. I thought he bought it; I should have known better though.

Q. Isn't it true, Mr. Mills, that Mr. Rudbach repeatedly told you that he didn't care whether Levick

(Testimony of E. A. Mills.)

paid for them or who paid for them, he was looking to the ship and her owners for payment? [81]

A. That was some little time, naturally, it would be some little time after the first indebtedness had been incurred, but his contention from that stand-point did not appeal to me at the time because so far as I thought Levick & Oliver were the owners; in other words, to bill them against the "South Coast" and owners would mean the "South Coast" and Levick & Oliver, not the "South Coast" and Roberts & Sooy.

Q. Is there any question in your mind but that Captain Rudbach in good faith sold these goods to the vessel and her owners? A. No, there is not.

Q. He sold them to whoever ordered them, with the honest intention of holding the vessel and her owners for it, did he not?

A. I think that was his intention.

Q. And he told you that too during the time it repeatedly came up, and he said, "Well, I am looking to the vessel and her owners for the payment of these goods"? A. Yes, he did.

Q. And he thought at that time that Levick was the owner—he had no reason to disbelieve that?

A. He had no reason to disbelieve Levick was the owner, because I had told him he was.

Q. He thought as a matter of fact that he was selling to the vessel and her owners?

A. Absolutely.

Redirect Examination.

Mr. CERF.—Q. Of course irrespective of what

(Testimony of E. A. Mills.)

Mr. Rudbach thought, Captain Roberts told you that the vessel was not to be responsible for it, but that Levick was, and when you got Mr. Sooy's letter in which he stated the vessel was not to be responsible, but that Levick the charterer was, you told that to Mr. Rudbach, did you not?

A. Oh, yes; I told him direct he would have to get this money from Levick repeatedly.

Q. And that was before any of these goods were ordered from [82] Captain Rudbach?

A. No, it was after.

Q. I mean it was before any of the goods involved in this case were ordered.

A. The first order as I say of five or \$10. I guaranteed personally. After Mr. Levick had shown me that I could recollect immediately without any delay by drawing a draft on him in San Francisco I then told Captain Rudbach that Mr. Levick had made satisfactory arrangements with me and he could go ahead and furnish supplies for the ship; the supplies following that furnished by the San Pedro firm I did not order because we had Captain Larson and we had a chief engineer on the ship, and we also had a ship carpenter who was put there to supervise the gang of carpenters, and we gave these boys permission to go ahead and order their stuff; after the first order, I don't think unless it was because they wanted me to do the telephoning or something of that kind, I don't think I ordered a thing; in fact, I am not in San Pedro more than about half of the time.

Q. This question I asked you, whether or not you

(Testimony of E. A. Mills.)

did not tell Captain Rudbach about Roberts' conversation with you and Sooy's letter to you, whether you did not tell him those things before he delivered any of these goods which were bought, beginning in August?

A. Well, I would not say, but the account certainly must have been very small because I got Mr. Sooy's letter just a very few days after Captain Roberts had told me the situation, and it is my recollection that I had that letter in front of me one day when Captain Rudbach came in my office, and I read over that letter and told him what the situation was, explained it to him.

Mr. LILLICK.—And he said, "Well, I am looking to the vessel and her owners in that case, too"?

A. I don't think he did at that time; I don't think really he did then; I think it came up later when we all began to work about the money; at that time I don't think there was any question about it, but later when we all [83] began to work about the money, then it began to be a question of libel suits and one thing and another, and with me it was not a question of libel suits; I could not very well resort to that; I had a letter from both former owners and new owners telling me who was responsible, and in view of such written evidence of that kind I was, you might say, up a tree, but I really think it was quite a little bit later after we began to worry about the bills, about the actual libelling of the ship and placing liens against the ship occurred, because there was really no occasion in the early days; the thing

(Testimony of E. A. Mills.)

ran along for quite a little while; all I had to do was to draw a draft, every time I paid the bills; later the drafts were stopped and they made other arrangements with a bank in Los Angeles, and then about the time the vessel was really ready for sea they really got into their money difficulty, so it was more likely at that time that any question of libelling the ship would have come up.

Q. In the meantime that would also apply to Captain Roberts and Mr. Sooy down there—they were down there as the owners of the vessel, were they not in August, 1915?

A. No, I would not say that they were.

Q. Do you remember when they started for Ensenada?

A. I remember about the time; I was in Los Angeles the day they started.

Q. But they were there and so far as you knew they had an interest in the vessel; you thought they were owners of the vessel, didn't you?

A. No, I knew they were former owners of the vessel; I knew Captain Roberts was going to be captain on the trip.

Q. You also knew that Captain Roberts was the man who ordered these goods from Captain Rudbach, did you?

A. Yes, as captain of the ship; in fact he told me he would [84] pay for the bunch of supplies, that particular lot of supplies; he said that Levick had given him \$1,100, I believe, to pay for the expenses

(Testimony of E. A. Mills.)

of that trip, and he was to pay for those supplies; he didn't do it; and the next day or a few days afterwards I met Captain Rudbach and the Captain asked me if I had that money, if Roberts had left it with me, and I told him no, and I presume I used the expression that he used this morning, not that I meant anything disrespectful.

The COURT.—Q. But because it was true?

A. I won't deny it, even if the gentleman is present; I do not think that we will lose our friendship through that.

Testimony of John Roberts, for Claimant.

JOHN ROBERTS, called for the claimant, sworn.

Mr. CERF.—Q. Captain Roberts, were you at Ensenada during the months of June and July, 1915?

A. Yes.

Q. What were you doing there?

A. I was a pilot for the Luckenbach Steamship Company.

Q. You were a pilot for the Luckenbach Steamship Company? On any of the occasions of your visits to San Pedro during the months of June and July, 1915, did you ever order any goods from anybody for the South Coast Steamship Company?

A. June and July?

A. June and July, 1915? A. Yes.

Q. In the month of August, 1915, did you go to San Pedro in connection with the South Coast Steamship Company?

A. Yes; I arrived there the day before she got in with a tow.

(Testimony of John Roberts.)

Q. Just listen to the questions that I ask you, Captain, and we will get along much faster. In the month of August, 1915, did you go to San Pedro in connection with the steamship "South Coast"?

A. No.

Q. Were you at San Pedro in connection with the business? [85] A. Yes.

Q. In what capacity?

A. Pilot for the Luckenbach Steamship Company.

Q. In what capacity in connection with the "South Coast" in August, 1915?

A. President of the company, but I had nothing to do with it.

Q. Now, Captain, just listen to the question; I am not asking you about June or July; I am talking about August. In August, 1915, the steamship "South Coast" left for Ensenada, didn't it?

A. Yes, on August 13; that is right.

Q. Did you have anything to do with that voyage?

A. Yes.

Q. What did you have to do with it?

A. Mr. Levick ordered me as master to take charge of her for one voyage.

Q. A voyage from San Pedro to Ensenada and return? A. Yes.

Q. Did you act as master for the voyage?

A. Yes.

Q. Did you on that occasion order some goods from Captain Rudbach?

A. Yes, I ordered some stores, some groceries only.

(Testimony of John Roberts.)

Q. Are those the goods which are referred to in a bill or an account which has been presented here and which bears your signature, John Roberts—I am now handing you “Libelant’s Exhibit 1.”

A. I want to see the whole bill; yes, that is right. That is the one I O. K.’d.

Q. Did you ever order from Captain Rudbach any goods of any kind or description except those which are referred to in these bills which you have approved, namely, “Libelant’s Exhibit 1”?

A. No.

Q. You never did? A. I never did.

Q. When you ordered these goods from Captain Rudbach will you tell us, please, what conversation took place?

A. Well, I first took a store bill, a bill that was made out by the steward aboard the ship, and gave it to Mr. Rudbach and told [86] him to fill it out and told him it was for Levick & Oliver for the “South Coast,” and that I was going as master to Ensenada and back, and that if I had money enough I would pay him; that I had so much money from Levick & Oliver, and that I would pay him; I would try to pay him, it followed I did not have enough to pay him; I had to take enough money to Ensenada, which is a foreign port, and he got mad with me that night, and I don’t know exactly what conversation there was between us, some little conversation, and I did not pay him, and when I came back from Ensenada he wanted to know why I didn’t pay him, and

(Testimony of John Roberts.)

I said I didn't have enough money and that Levick & Oliver were going to pay him.

Q. Do you remember going over to Rudbach's store with Mr. Sooy? A. Yes.

Q. That was a day or so before the vessel sailed from San Pedro?

A. That was on the 12th, in the afternoon; on the 12th, I think it was, the 12th or 13th; I am not sure; it might have been the day that we sailed; we sailed early in the morning, one o'clock in the morning; we were not ready until midnight.

Q. You remember the occasion when you went over to the store? A. Yes.

Q. Do you remember the conversation which took place at that time?

A. Yes. I said "This is my partner."

Q. I asked you if you remembered it? A. Yes.

Q. Now, just tell us what it was.

A. I said, "This is my partner and I want you to talk to him about this ship," that the stores was on Levick & Oliver. Then Mr. Sooy started in to talk to him; I heard the conversation,—that the ship would not be responsible in any way, that she was a chartered ship, and also to be sold to Levick & Oliver; Mr. Sooy explained to him, to Captain Rudbach, the whole thing.

Q. Was there any other thing done at that time that you and Mr. [87] Sooy went over to Rudbach's store for? Did you go for any other purpose? Did you order any other goods?

A. I may have ordered a few little things, some

(Testimony of John Roberts.)

few little trifling things that were forgotten; I don't know how much, maybe a few dollars.

Q. You don't remember whether you did, or not?

A. No, I suppose I did.

Q. I asked you if you remember.

A. I think I do; I think I did.

Q. I don't want your supposition.

A. It did not amount to very much, however.

Q. Did you on any occasion after the libel was filed in this suit tell Captain Rudbach that the ship, the "South Coast," was liable for all of those bills and that he would be paid and that Mr. Sooy as a lawyer was interested in promoting litigation concerning this ship?

A. I was not here when the ship was libeled.

Q. I am asking you whether or not you ever had any such conversation.

A. With Mr. Rudbach?

Q. Yes. A. No, indeed I did not.

Q. Did you ever on any occasion tell Rudbach that the ship the "South Coast" was responsible for these bills? A. I never did.

Q. As pilot of the Luckenbach Company, you have occasion to go to San Pedro about twice a month, have you not?

A. Yes, sometimes four times, according to the ships that arrive.

Q. Between August and the end of the year you went to San Pedro very frequently, didn't you?

A. Yes; I have a memorandum book, I always keep a diary, but I have not it here.

(Testimony of John Roberts.)

Q. I am asking you if you went there very frequently. A. Yes.

Q. On any one of those occasions did Mr. Rudbach ever present you with a bill for any of the goods which he had sold that went aboard the "South Coast"? A. No. [88]

Q. Did he on any one of these occasions ever ask you when the bill was going to be paid?

A. No, only this bill.

Q. Did he ever ask you to pay any of these bills?

A. Only this bill.

Q. Did he on any occasion ask you to pay that bill except the time you came back from Ensenada?

A. No bills whatever.

Q. After you came back from Ensenada and came up to San Francisco and started to act again as pilot for the Luckenbach Company did Captain Rudbach ever ask you to pay any bill, even this one that you O. K.'d?

A. He spoke to me, said he was not getting his money, and I said, "You had better get after Lillick."

Q. Did he ever ask you to pay it? A. No.

Q. Did he ever present you with any one of these bills approved by Larson or Johnson or any of the other masters? A. No, I never saw them.

Q. But when you were down at San Pedro twice or three times a month did you always see Captain Rudbach? A. Always.

Cross-examination.

Mr. LILLICK.—Q. Are you quite sure about that,

(Testimony of John Roberts.)

that Mr. Rudbach never asked for payment of any of these bills? A. Excepting this one.

Q. He asked you to pay that one? A. Yes.

Q. Never asked you about any of the others?

A. No.

Q. Never had any conversation with you about it at all?

A. No—yes, he asked me who was going to pay them, and I said, "You had better look to Sooy and Mr. Mills."

Q. So he did have several conversations with you?

A. Two or three times he wanted to know who was going to pay them.

Q. You said that Mr. Sooy and Mr. Mills?

A. I didn't know anything about the other bills, I didn't know [89] how much—how much the vessel had charged up to her, I could not say.

Q. You remember coming to my office about this, don't you, Captain Roberts? A. Yes.

Q. About this case? A. Yes.

Q. You were the president of the South Coast Steamship Company during all this time, were you not? A. Yes.

Q. Captain, those supplies that are named in these bills were all supplies that were used on the "South Coast," weren't they, on the steamer "South Coast"?

A. I don't know, except only this one bill.

Q. You know about that, don't you?

A. About this one bill.

(Testimony of John Roberts.)

Q. They were the ordinary supplies taken by the vessel on her voyage; they were for the crew and captain, and they were part of the supplies that were on the ship when Mr. Sooy was down there and you asked Mr. Rudbach to have a little bite of supper with you?

A. No, you are mistaken about that.

Q. Tell me about that.

A. I didn't see any other bills but this bill. He said that he had other bills against her, but I didn't know anything about them. I know there had been some from time to time, but I didn't know how much, what the amount was; I didn't know who was going to pay them.

Q. You remember the time that he came down there when Mr. Sooy was eating in the cabin, and you asked him to come down and have some supper? A. Yes; I did not go down.

Q. But he went on down?

A. He went on down.

Q. He asked you, then, for the money for this bill, didn't he? A. Yes.

Q. And you said, "Well, that is all right, you see Mills, he will pay you; I left the money up there with Mills"? A. No, I don't think I did. [90]

Q. What did you tell him?

A. I told him that I would try and pay him the amount of this bill, which I always did want to pay Mr. Rudbach.

Q. He is entitled to the money, isn't he?

A. This bill he is not.

(Testimony of John Roberts.)

Q. Don't you think he is entitled to it?

A. No, he is not entitled to it, not by me, because I have no money. Mr. Levick took this money for this voyage and spent the money; I don't know how he spent it but he gave me \$1,000 for to take along and pay these bills and pay the crew, which I spent the money to pay the crew off and pay for other bills and did not pay this bill.

Q. You went on down to Ensenada? A. Yes.

Q. Mr. Sooy went with you? A. Yes.

Q. And you came back here? A. Yes.

Q. San Pedro is just as much a foreign port to the "South Coast" as Mazatlan, is it not? A. No.

Q. Why not?

A. Because she has been running there for the last 20 years.

Q. She is registered here, is she not? A. Yes.

Q. You know that a vessel whenever she is in any port except the home port is in a foreign port?

A. I can get credit in San Pedro, but I could not get credit in Ensenada.

Q. You say you could get credit in San Pedro?

A. Yes. I don't know as I could get credit on the "South Coast."

Q. I do not mean your personal credit, but for supplies to a vessel.

A. As a general thing they do give credit, they know the owners.

Q. Now, Captain, is there any question in your mind that Rudbach thought he was delivering these goods to the steamer "South Coast" and they were

(Testimony of John Roberts.)

being sold to the owner of that vessel? [91]

A. No; to Mr. Levick & Oliver all the time. I would like to state to the Court.

Mr. CERF.—Never mind.

Mr. LILLICK.—We will be very glad to hear it.

A. I would like to state to the Court this, that when the ship was under charter to Levick & Oliver, I told Captain Larson and the engineer that the ship was chartered to Levick & Oliver and that no bills should go against the steamer whatever, in any way, shape or form, and if they should at any time, to notify me or Mr. Sooy.

Q. You knew during all of this time that a man like Rudbach and the Hippel Machine Works and the other people down there were looking to the vessel for their payment? A. No.

Q. Don't you know that they were looking to the vessel for payment?

A. No; I hold up my hand to God, they never did; they looked to Levick & Oliver; they all the time looked to those men, as Mr. Mills also knew; because a vessel is lying there for a year, and the vessel had no money—I owned the "South Coast" and Mr. Sooy was trusting simply to me, and the vessel had been abandoned on two or three different occasions, and she was left in a big debt, and that is the reason I took hold of this vessel, this little steamer, and everybody in San Pedro knew that this vessel was chartered to go to Mexico, and she was chartered by Levick & Oliver with the privilege of buying her; they never paid us the \$3,000 for the advance money

(Testimony of John Roberts.)

that they were to pay; they never paid me one cent.

Q. Captain, how much did they put on her,—tanks?

A. They put tanks for their own use.

Q. In money is what I mean.

A. In the neighborhood of about \$8,000.

Q. Was it not ten or \$11,000?

A. No; the crew and everything, after they threw her up, when they had no money, it would amount [92] to about \$11,000, I should judge.

Q. Did you hear Mr. Sooy testify a little earlier?

A. He was right.

Q. That is, that \$11,000—

A. About \$11,000, in the neighborhood of \$11,000. I could not tell exactly.

Q. And \$8,000 of that went into the vessel—I mean went into the vessel as permanent improvements on the vessel?

A. Yes, but you must understand that the crew was paid, and there were libels and one thing and another on the things that had to be paid.

Q. You were down there when these goods were being furnished to her, were you not?

A. I was down there from time to time; Captain Larson had full charge of the work with this man, this carpenter, and also Mr. Mills.

Q. And you knew that these men down there were supplying these things to the vessel, didn't you?

A. Yes, I knew, because I knew they were to settle it with Levick & Oliver, not with me; they knew I had nothing.

(Testimony of John Roberts.)

Q. You ordered part of them yourself, didn't you?

A. I ordered them for that voyage; I got a leave of absence for three weeks to go on this trip to Ensenada from the Luckenbach Steamship Company, I was working for them.

Q. You took the "South Coast" back, didn't you, from Levick & Oliver?

A. No, I did not, they just simply threw it at me.

Q. It came back to you with this \$8,000 worth of improvements and tanks and the other things, and you have got those now, haven't you, there on board the "South Coast"?

A. I am telling you that we did not get \$8,000, because there was \$8,000 spent paying for crews and everything of that kind.

Q. The \$8,000 was spent for the crew and for the supplies and other things?

A. For supplies and one thing and another, and [93] then they spent—I don't know how much they spent.

Q. Didn't you testify just a moment ago that \$3,000 of that money went to the crew, and for supplies—what is the fact about it, Captain? How much did the tanks and the other repairs that you say were done to enable her to pass inspection cost?

A. The tanks in the neighborhood of \$2,800.

Q. What did all the other things that enabled her to pass inspection cost,—about \$8,000?

A. Well, I am telling you that the crew, paying them off, after she made her voyage to Mexico—

Q. —That cost \$2,000 more, didn't it?

(Testimony of John Roberts.)

A. It was \$11,000.

Q. And \$8,000 of it Captain, went into—

A. —Repairs.

Q. Into repairs and tanks?

A. I could not say that it did; I could not say; it would probably cost \$8,000.

Q. That is your best impression, your best judgment? A. Yes.

Q. Do you remember Rudbach being with you at the time you went over the vessel when she was being made ready to pass the United States inspection?

A. Yes, he helped me.

Q. He helped you and he furnished those goods there under your orders, didn't he? A. Yes.

Q. Now Captain, after going over this again, don't you remember telling Rudbach that the vessel was responsible for those bills that he had owed him?

A. Mr. Lillick, how could I tell Mr. Rudbach? How could I tell him such a thing as that, when it was not so.

Q. You say that is not so?

A. It is not so, no.

Q. Do you testify Captain—this is very serious, Captain—do you testify here under oath, that you never told Captain Rudbach?

A. I never told him.

Q. Let me finish my question. That you never told Captain Rudbach [94] that the steamer was responsible for those bills and he would get his money?

A. Mr. Lillick, how could I tell him that when the

(Testimony of John Roberts.)

vessel was under repairs to Levick & Oliver—I could not tell him that.

Q. She was under repairs to Levick & Oliver, but didn't you tell Rudbach that? A. No.

Q. Didn't tell him that at San Francisco after these bills were furnished, after these goods were furnished?

A. No, I did not; I could not have told him such a thing as that.

Q. You did not tell him that after you had been to my office to talk about this with me?

A. I never told him such a thing as that.

Q. You absolutely deny it? A. Yes.

Mr. CERF.—We rest.

Testimony of J. C. Rudbach, for Libelant (Recalled in Rebuttal).

Mr. RUDBACH, recalled in rebuttal.

Mr. LILLICK.—Q. Captain Rudbach, you have just heard Captain Roberts testify before he left the stand, that he never told you that the steamer "South Coast" would be responsible for these bills of yours. What do you say to that?

A. He not only told me on one occasion but he told me at the very least on half a dozen occasions.

Q. Have you in mind any occasion when someone else was present at such conversations?

A. Yes, at one conversation Captain Larson was present when we talked about insurance. Do you want me to explain that?

Q. By all means.

A. After they came back from Ensenada and be-

(Testimony of J. C. Rudbach.)

fore she was going away again, and after they had refused to [95] pay me, claiming they had no money, and so forth, that Levick & Oliver should pay these bills, and that would be all right, I said, "Captain, I will hold the ship responsible for those goods, you know they are charged to the ship," and I said, "This Levick & Oliver stuff I have nothing to do with it, because I do not look to them for anything, if they pay me well and good, I am satisfied, but I look to the ship and owners"; I said, "All I have is the ship now if anything should happen, and if the ship got lost you perhaps would not feel like going down into your pockets and pay these bills," as I understood he was the owner and I wanted to know if the ship was insured, and he said, "the ship is insured and the ship is responsible for your bills and don't worry about it."

Q. Are you positive about that, that "the ship is responsible for your bills and dont 'worry about it'"?

A. Yes.

Q. You are positive about it?

A. Yes, positive.

Q. Now, about that conversation that you had with Mr. Mills with reference to the responsibility of the owners of the vessel, will you go over that again and give me your version of it?

Mr. CERF.—Just a minute, if it is the idea of counsel to ask for a repetition of testimony which has already been given by this particular witness I object to it on that ground.

The COURT.—The objection will be sustained

(Testimony of J. C. Rudbach.)

We had his conversation.

Mr. LILLICK.—We had the conversation but the captain during the lunch hour gave me a statement about something that he wanted to state.

The COURT.—Let it go in.

Mr. LILLICK.—Captain Rudbach I understand Mr. Mills told you that he had received a notice from Mr. Sooy? A. Yes.

Q. Was that notice that Mr. Mills testified about, and a carbon [96] copy of which was put in evidence; will you tell us what occurred after that with reference to your having inquired about the ownership of the vessel, if you did so inquire?

A. Yes, I inquired from Captain Larson afterwards.

Q. What did you say about it?

A. Well, I told Captain Roberts about it; I said, "You are the owner of this ship," and he said yes.

Q. Now, at that conversation with Captain Roberts when you talked to him about it, was anything said about who would be responsible for the bills ordered, whether the South Coast Steamship Company or the vessel was going to be responsible for it?

A. The vessel at that time; I told him I had been furnishing goods to this vessel now and I said, "they are all charged to the ship and the owners" and he says, "Well, old man, I know all about it," he said, "don't worry about it, the ship will be responsible for it."

Mr. CERF.—No questions.

Testimony of Peter L. Larson, for Libelant (in Rebuttal).

PETER L. LARSON, called for the libelant in rebuttal, sworn.

Mr. LILLICK.—Q. Captain Larson, you were one of the captains of the steamer "South Coast" during the time when Mr. Rudbach furnished supplies for her, were you not? A. Yes.

Q. Do you remember any conversation that occurred where Captain Roberts was asked by Mr. Rudbach, "Is your vessel insured"? A. Yes.

Q. In that conversation did Mr. Rudbach say to Captain Roberts "I am going to hold the vessel responsible for my bills?"

A. I did not hear that, but he said "you are protected."

Q. Instead of my asking you questions in that way Captain, tell us your recollection of what if anything Captain Roberts said to Captain Rudbach about the vessel being responsible for those [97] bills and he would get his money?

A. The conversation took place in San Pedro, in which Captain Rudbach said to Captain Roberts, I was standing alongside of them—"You know Captain, I could not afford to lose these bills, the ship may be leaving this port; you are here now," he says, "and I want to know from you what is going to be done." Captain Roberts says, "That is all right, old man, you will be taken care of, you are all right." Then Captain Rudbach says, "How, in what way—is

(Testimony of Peter L. Larson.)

the ship insured?" and Captain Roberts says, "Yes, and you will be protected."

Q. Do you remember whether anything was said at that conversation by Roberts that the vessel would be responsible for the bills? A. I did not hear that.

Q. Captain, you came up to San Francisco after this vessel was libeled did you not, or was it before?

A. After she was libeled.

Q. And you brought to my office certain bills of other people, did you not? A. Yes.

Q. Did you have any conversation with Captain Roberts about the responsibility of the steamer "South Coast" for those bills, that is, the bills which you brought up?

A. With Captain Roberts?

Q. Yes. A. I saw him, but he disputed them.

Q. You saw him but he disputed them? A. Yes.

Q. During the time you were captain of the vessel you ordered certain supplies yourself, did you not?

A. I bought some under orders from Mr. Mills; when I was engaged in San Francisco and took the boat down Mr. Sooy gave me instructions in his office in this way, "Do all you can now," and he said, "Captain Roberts will meet you in San Pedro at your arrival and give you full instructions"; the day we came into San Pedro Captain Roberts came out in a tug and met us, and [98] placed us in a berth for repairs; I said "Captain Roberts, what are the instructions, who is going to buy the stock, who is going to engage the carpenter and who is going to attend to all these things?"

(Testimony of Peter L. Larson.)

He said, "Mr. Mills." I went to Mr. Mills on the following day and he ordered such things as were necessary for the repairs.

Q. Were these repairs made upon the vessel, Captain? A. Yes.

Q. Did you order certain things from Captain Rudbach here?

A. Yes, but not before several orders were given by Mr. Mills.

Q. Now, on those things that you ordered, were they delivered on the vessel? A. Yes.

Q. Were they used on the vessel? A. Yes.

Q. Could the vessel have gone to Mexico without them? A. No.

Mr. CERF.—No questions.

Mr. LILLICK.—We rest.

(Thereupon the case was submitted upon briefs 10, 10 and 5.)

[Endorsed]: Filed Jul. 22, 1916. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [99] |

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

IN ADMIRALTY—No. 15,939.

J. C. RUDBACH,

Libelant,

vs.

The Steamer "SOUTH COAST," Her Engines, etc.,

Respondent.

SOUTH COAST STEAMSHIP COMPANY,

Claimant,

Opinion and Order to Enter Decree in Favor of the Libelant for the Amount Prayed for.

IRA S. LILLICK, Esq., Proctor for Libelant.
MERCEL E. CERF, Esq., H. W. GLENSOR,
Esq., and CHARLES H. SOOY, Esq., Pro-
tors for Respondent and Claimant.

Libelant furnished supplies at various times to the Steamer "South Coast" in the harbor of San Pedro, each time on the order of the person then her master. The vessel was, during this period, being operated by one Levick under a charter from the owners, which charter was also in the nature of a conditional bill of sale, or option to purchase. Libelant before furnishing any of the supplies in question was informed that the vessel was under charter to Levick and had been warned by the owners of the vessel not to have any bills go on the ship's account, and had also been advised that Levick and Oliver would pay the bills. To this he replied that it was immaterial to him who paid the bills, but that he would not sell any goods to the ship in any other way than by charging them to the ship and her owners; and if they did not want [100] it that way he would not deliver any goods. This was stated by him to one Mills, who first informed him that Levick was operating the ship, and who had been directed by the owners to give him warning not to sell on the credit of the ship. He was also warned by Mr. Sooy one of the owners not to deliver any goods on the credit of the ship. So that if the owners, after the delivery of the ship to the charterers, had any power to prevent

the attaching of a lien for supplies by warning the libellant not to furnish such supplies on the credit of the ship, such warning was clearly and definitely given.

The charter in question contains the following provisions:

“Fifth:—It is understood that this charter is a charter of the bare vessel, and that the party of the second part (Lewick) shall furnish the crew, pay their wages, victual them, furnish all deck and engine room and saloon stores, and supplies of every kind and nature; pay for all fuel, fresh water, port charges, wharfages, customs charges, customs fines or Government fines, pilotages, over time of crew; agencies, commissions, consular charges, dry docking, painting of the hull of said vessel, furnishing all lines and slings, and pay all charges whatsoever of every nature, whether of the same kind as hereinabove enumerated or otherwise, that may be incurred in or about the use of said vessel during the term of this charter.”

“Tenth:—Said party of the second part further covenants * * * that if said payments (charter hire) be not made, then at the option of the first party said vessel will be delivered to the said party of the first part * * * free from all liens and claims of every kind or description whatsoever during the term of this charter-party, except the lien for any salvage services that may be rendered to said vessel, and that he, the said party of the second [101] part, will hold and save harmless the said

party of the second part from all liens, claims or demands upon or against the said vessel that may be preferred against the said party of the first part or against the said vessel, and arising or created during the term of this charter-party, except any claim for salvage services that may be rendered to said vessel; and further, will save said party of the first part harmless from all liens, losses, damages, costs or expenses that said party of the first part may sustain or be put to in consequence of such liens, claims or demands, or in respect to any litigation arising out of or in respect thereto or connected therewith."

While these provisions require the charterer to pay all expenses incurred in operating the vessel they do not deprive him of authority to bind the vessel therefor. Indeed they seem rather to concede to him such authority by providing that he shall save the owners harmless from all liens against the vessel arising or created during the term of the charter-party. The Act of June 23d, 1910, gives a maritime lien to any person furnishing supplies to a vessel, whether foreign or domestic, upon the order of the owners, which lien may be enforced without alleging or proving that credit was given to the vessel. It also provides that the managing owner, ship's husband, or master, appointed by a charterer, or an agreed purchaser in possession of the vessel, shall be presumed to have authority from the owner to procure such supplies.

The only condition upon which such lien may not be created is found in the following words of the

Act "but nothing in this act shall be construed to confer a lien when the furnisher knew, or by the exercise of reasonable diligence could have ascertained, that because of the terms of the charter-party, agreement for sale of the vessel or for any other reason, the person ordering [102] the supplies was without authority to bind the vessel therefor." But by the charter in the instant case the person ordering the supplies, that is to say, the master, was not without authority to bind the vessel therefor. And while the owners took every precaution to warn the furnisher of the supplies not to have any of them go on the ship's account, they did not take the essential and fundamental precaution to provide by the terms of the charter that the charterer, or the master appointed by him, should be without authority to bind the vessel therefor. The case presented here is different from that of the *Eureka* (209 Fed. 373) because in that case the option to purchase provided that the holder of the option, though given possession of the vessel, should not incur any lien upon her, nor make any purchases on her account. The present charter contains no such provision, but on the contrary by its very terms contemplates that the charterer should have authority to bind the vessel, and the owners having executed such a charter and delivered the vessel thereunder, were thereafter without power to prevent the creation of the liens provided for by the Act above mentioned,—their remedy being against the charterer upon his agreement to hold them harmless from such liens.

A decree will be entered for the amount prayed for.

June 7th, 1916.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Jun. 7, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [103]

*In the District Court of the United States, for the
Northern District of California.*

At a stated term of the District Court of the United States of America, for the Northern District of California, held in the City and County of San Francisco, on Thursday, the 8th day of June, one thousand nine hundred and sixteen. Present: M. T. DOOLING, District Judge.

IN ADMIRALTY—No. 15,939.

J. C. RUDBACH,

Libelant,

vs.

The Steamer "SOUTH COAST," Her Engines, Boilers, Machinery, Tackle, Apparel and Furniture,

Respondent.

SOUTH COAST STEAMSHIP CO., a Corporation,
Claimant.

Final Decree.

The above-entitled cause having come on regularly for hearing and having been heard upon the pleadings and proofs, and having been argued and submitted by

the proctors for the respective parties, and, in accordance with the opinion heretofore filed herein, and the stipulation dated December 23, 1915, entered into between the proctors for the respective parties hereto, and due deliberation having been had, on motion of Ira S. Lillick Esq., proctor for libelant, it is

Orderd that the libelant, J. C. Rudbach, do have and recover in this action against the steamer "South Coast," etc., the sum of Fourteen Hundred Seventy-four and 55/100 Dollars (\$1474.55), being the amount prayed for in the libel on file herein, including interest on said amount from the first day of November, 1915, to the date hereof, at the rate of seven (7) per [104] cent per annum, and that said libelant do have and recover against the said vessel the said sum, with interest thereon at the rate of seven (7) per cent per annum from the date hereof and until paid, together with libelant's costs to be taxed;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that, in accordance with the terms of the stipulation hereinbefore referred to, the following named claimants do have and recover against the said steamer the respective amounts hereinafter set opposite their respective names, with interest thereon at the rate of seven (7) per cent per annum from the first day of September, 1915, and until paid:

NAMES:	AMOUNTS.
M. G. Didricksen.....	\$ 7.
H. Ekrem	7.25
Montgomery & Buckley.....	9.
Los Angeles Boiler Works.....	1.50

NAMES:	AMOUNTS.
Al Larson	16.36
A. Young	12.
San Pedro Marine-Engine Works.....	136.75
W. B. Hippel Machine Shop.....	622.06
	M. T. DOOLING,
	District Judge.

San Francisco, California, June 8, 1916.

Reserving all rights to appeal from the decree herein, the undersigned, proctors for the claimant, South Coast Steamship Co., hereby stipulate that, in accordance with the agreements entered into upon the 23d day of December, 1915, between the proctors for the respective parties hereto, the said decree may provide for the entry of judgment against the steamer "South Coast," for the sums set opposite the respective names of the claimants named in said decree, other than the libelant.

MARCEL E. CERF,
C. H. SOOY,

Proctors for Claimant, South Coast Steamship Co.

[Endorsed]: Filed Jun. 8, 1916. W. B. Maling,
Clerk. By T. L. Baldwin, Deputy Clerk. [105]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

IN ADMIRALTY—No. 15,939.

J. C. RUDBACH,

Libelant,

vs.

The Steamer "SOUTH COAST," etc.,

Respondent.

SOUTH COAST STEAMSHIP CO., a Corporation,

Claimant.

Notice of Appeal.

To the Clerk of said Court and to Ira S. Lillick,
Proctor for Libelant:

Please take notice that South Coast Steamship Co., a corporation, claimant in the above-entitled libel, hereby appeals to the next United States Circuit Court of Appeals for the Ninth Circuit, to be held in and for said Circuit, at the City and County of San Francisco, in the Northern District of California, from the final decree made and entered in said libel on the 8th day of June, 1916.

Dated at San Francisco, California, this 17th day of June, 1916.

MARCEL E. CERF,
C. H. SOOY,

Proctors for Claimant and Appellant.

Received copy of within Notice of Appeal, June 17, 1916.

IRA S. LILLICK,
Proctor for Libelant.

[Endorsed]: Filed Jun. 17, 1916. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [106]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

IN ADMIRALTY—No. 15,939.

J. C. RUDBACH,

Libelant and Appellee,
vs.

The Steamer "SOUTH COAST," etc.,

Respondent.

SOUTH COAST STEAMSHIP CO., a Corporation,
Claimant and Appellant.

Assignment of Errors.

South Coast Steamship Company, a corporation, claimant in the above-entitled libel, hereby assigns error to the decree of the District Court of the United States in and for the Northern District of California, First Division, in the said libel, in the particulars hereinafter specified:

1st. The Court erred in holding that the persons who ordered the supplies furnished by the libelant, were authorized to bind the vessel, the steamship "South Coast," therefor.

2d. The Court erred in holding that the persons who ordered the supplies furnished by the libelant, were not without authority to bind the vessel, the steamship "South Coast," therefor.

3d. The Court erred in holding that the char-

terer of said vessel was not deprived of authority to bind the vessel for the expenses incurred in operating her.

4th. The Court erred in holding that the person ordering the supplies furnished by the libelant, that is the master of the vessel, the steamship "South Coast," was not without authority to bind the vessel therefor.

5th. The Court erred in holding that in order that a [107] vessel shall not be subject to a lien for supplies furnished at the instance of a charterer, it is essential and fundamental to provide by the terms of the charter-party, that the charterer or the master appointed by him, should be without authority to bind the vessel therefor.

6th. The Court erred in holding that the charter-party by which the vessel, the steamship "South Coast," was chartered to Levick contained no such provision, as one whereby the charterer, though given possession of the vessel, should not incur any lien upon her, or make any purchases on her account.

7th. The Court erred in holding that the charter-party, by its very terms, contemplates that the charterer should have authority to bind the vessel.

8th. The Court erred in holding that the libelant did not know or by the exercise of reasonable diligence could not have ascertained, that the persons ordering the supplies furnished by the libelant, were without authority to bind the vessel, the steamship "South Coast" therefor.

9th. The Court erred in not dismissing the libel with costs.

10th. The Court erred in entering a decree in favor of the libellant and against the steamship "South Coast."

11th. The Court erred in allowing interest at the rate of seven per cent per annum on the amounts which the Court found that the vessel should pay.

Dated June 26th, 1916.

MARCEL E. CERF,
C. H. SOOY,

Proctors for Claimant and Appellant.

Received a copy of within Assignment of Errors this June 26, 1916.

IRA S. LILLICK,
Proctor for Libellant and Appellee.

[Endorsed]: Filed Jun. 26, 1916. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [108]

*In the District Court of the United States, for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,939.

J. C. RUDBACH,

Libellant,

vs.

The Steamer "SOUTH COAST," Her Engines,
Boilers, Machinery, Tackle, Apparel and Furniture,

Respondent.

SOUTH COAST STEAMSHIP CO., a Corpora-
tion,

Claimant.

Stipulation Regarding the Entry of Decree.

WHEREAS, a libel has been filed in the above-entitled court by J. C. Rudbach against the steamer "South Coast," for the reasons and causes in said libel mentioned; and

WHEREAS, M. G. Didricksen, H. Ekrem, Montgomery & Buckley, Los Angeles Boiler Works, Al Larson, A. Young, San Pedro Marine Engine Works and W. B. Hippel Machine-Shop, all being material and supply men of the city of San Pedro, State of California, furnished materials and supplies and performed repairs upon said steamer, "South Coast," during the period when said J. C. Rudbach also furnished materials to said vessel; and

WHEREAS, the claimants above named are all represented by Ira S. Lillick, the proctor representing the libellant in the above-entitled cause, and threaten to, and will unless some assurance is given them that their claims will be paid, file libels in intervention in the above-entitled cause, and cause the said steamer "South Coast" to be attached and seized under [109] process issued in said libels in intervention; and

WHEREAS, the parties to this stipulation and agreement desire to obviate the necessity of the costs attendant upon filing such libels in intervention on behalf of said claimants;

NOW, THEREFORE, IT IS HEREBY STIPULATED and agreed that liability for said demands of said claimants for materials and supplies to said

steamer may be determined by such final decree rendered in the above-entitled cause by the said Court, or, in case of appeal, or writ of certiorari, by the court to which said cause may be appealed, or certified; and

In the event that said steamer "South Coast" shall be held under such decree to be liable to J. C. Rudbach for the materials and supplies furnished to her by him, amounting to \$1,253.73 as prayed for in said libel of J. C. Rudbach, then, and in that event, and as a part of the decree entered in the above-entitled cause, the said decree may, and it shall, also provide for the entry of judgment against the said steamer "South Coast" in favor of the following named claimants in the amounts specified opposite each of their respective names, viz.:

M. G. Didricksen.....	\$ 7.
H. Ekrem.....	7.25
Montgomery & Buckley.....	9.
Los Angeles Boiler Works.....	1.50
Al Larson.....	16.36
A. Young.....	12.
San Pedro Marine Engine Works..	1.50
San Pedro Marine Engine Works..	135.25
W. B. Hipple Machine-Shop.....	622.06

Dated, San Francisco, Cal., December 23, 1915.

SOUTH COAST STEAMSHIP COMPANY.

By C. H. SOOY,

Secretary.

H. EKREM,

M. G. DIDRICKSEN,

JOHN MONTGOMERY. [110]

W. M. PARKER, JR.,

SAN PEDRO MARINE ENG. WKS.,

A. YOUNG,

W. B. HIPPLE MACHINE-SHOP,

W. B. HIPPLE, Prop.

MARCEL E. CERF,

H. W. GLENSOR,

C. H. SOOY,

Proctors for Claimant, South Coast Steamship Co.

IRA S. LILLICK,

Proctor for Claimants Above Named.

San Francisco, Cal., December 23, 1915.

To Ira S. Lillick, Esq., Proctor for M. G. Didricksen,
H. Ekrem, Montgomery & Buckley, Los Angeles Boiler Works, A. Larson, A. Young, San Pedro Marine Engine Works and W. B. Hipple Machine-Shop:

In consideration of your not filing libels against the steamer "South Coast," in order to attempt to recover the amounts claimed to be due the above-named claimants from the steamer "South Coast," and in further consideration of your signing the stipulation hereto annexed, the undersigned hereby agrees to hold out of any money realized from the sale of the steamer "South Coast," or from any in-

surance or charter money paid the South Coast Steamship Co., by reason of its ownership of said vessel, a sufficient amount to pay the claimants above named, with such interest as may be provided by such decree as may be entered in the case of Rudbach vs. the Steamer "South Coast," referred to in said stipulation.

SOUTH COAST STEAMSHIP COMPANY.

By C. H. SOOY.

MARCEL E. CERF.

H. W. GLENSOR. (Seal)

H. EKREM.

M. F. DIDRICKSEN.

W. M. PARKER, JR.

SAN PEDRO MARINE ENG. WKS.

A. YOUNG,

W. B. HIPPLE MACHINE-SHOP.

W. B. HIPPLE, Prop.

[Endorsed]: Presented in open court and filed March 14, 1916. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [111]

CLAIMANT'S EXHIBIT "B."

June 26, 1915.

Mr. E. A. Mills,

Pacific Wharf & Warehouse Co.,

East San Pedro, Cal.

Dear Sir: Under the provisions of charter and option given by the South Coast Steamship Co., the owner of the S. S. South Coast, to Mr. Levick, the repairs now being made to this vessel are to be made for the credit of Mr. Levick and not upon the credit

of the vessel. This is also true as to any supplies that may be furnished the vessel or on account of any labor furnished thereto. Carrying out the agreement with Mr. Levick *all* of the persons, firms or corporations furnishing supplies, labor or materials to said vessel are to be notified either by you, or ourselves that they cannot hold the vessel for any supplies, labor or materials furnished the said vessel. Upon receipt of this letter you will therefore please notify all persons furnishing said supplies, labor or materials to the vessel that they must look to Mr. Levick and not to the vessel for payment of same. Please notify me in answer to this that you have done as requested, and let me know the names of the people whom you have notified. I would rather, on account of relationships, have you notify these people than for us to write the letters, because if we wrote it it might in someway injure Mr. Levick, and this I do not wish to do. I have just been informed by Mr. Levick and Mr. Oliver that he has arranged for insurance on the vessel after repairs are made. Thanking you in advance for this courtesy, I am,

Very truly yours, [112]

*In the District Court of the United States, in and for
the Northern District of California, First Divi-
sion.*

IN ADMIRALTY—No. 15,939.

J. C. RUDBACH,

Libelant,

vs.

The Steamer "SOUTH COAST," Her Engines, etc.,
Respondent.

SOUTH COAST STEAMSHIP COMPANY, a
Corporation,

Claimant.

**Stipulation and Order Extending Time to File
Apostles to August 16, 1916.**

It is hereby stipulated and agreed by and between
the parties hereto that the appellant, South Coast
Steamship Company, may have to and including the
16th day of August, 1916, within which to file its
apostles on appeal in the above-entitled action.

Dated July 17, 1916.

IRA S. LILLICK,

Proctors for Libelant and Respondent.

MARCEL E. CERF,

C. H. SOOY,

Proctors for Claimant and Appellant.

By the Court:

It is so ordered.

Dated July 17, 1916.

WM. W. MORROW,

Judge.

[Endorsed]: Filed Jul. 17, 1916. W. B. Maling,
Clerk. By T. L. Baldwin, Deputy Clerk. [113]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

IN ADMIRALTY—No. 15,939.

J. C. RUDBACH,

Libelant,

vs.

The Steamer "SOUTH COAST," Her Engines, etc.,
Respondent.

SOUTH COAST STEAMSHIP CO., a Corporation,
Claimant.

**Stipulation and Order Extending Time to File
Apostles to September 16, 1916.**

It is hereby stipulated and agreed by and between the parties hereto that the appellant, South Coast Steamship Company, may have to and including the 16th day of September, 1916, within which to file its apostles on appeal in the above-entitled action.

Dated August 16, 1916.

IRA S. LILLICK,

Proctor for Libelant and Respondent.

MARCEL E. CERF,

C. H. SOOY,

Proctors for Claimant and Appellant.

By the Court:

It is so ordered.

Dated August 16, 1916.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Aug. 16, 1916. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [114]

*In the District Court of the United States, in and for
the Northern District of California, First Divi-
sion.*

IN ADMIRALTY—No. 15,939.

J. C. RUDBACH,

Libelant,

vs.

The Steamer "SOUTH COAST," Her Engines, etc.,
Respondent.

SOUTH COAST STEAMSHIP COMPANY, a Cor-
poration,

Claimant.

**Stipulation and Order Extending Time to File
Apostles to October 1, 1916.**

It is hereby stipulated and agreed by and between
the parties hereto that the claimant and appellant in
the above-entitled action may have to and including
the 1st day of October, 1916, within which to file
its apostles on appeal in the said action.

Dated September 18, 1916.

IRA S. LILLICK,
Proctor for Respondent.
MARCEL E. CERF,
C. H. SOOY,
Proctors for Appellant.

By the Court:
It is so ordered.

Dated September 18, 1916.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Sep. 18, 1916. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [115]

**Certificate of Clerk U. S. District Court to Apostles
on Appeal.**

I, Walter B. Maling, Clerk of the District Court of the United States of America, for the Northern District of California, do hereby certify that the foregoing 115 pages, numbered from 1 to 115, inclusive, contain a full, true and correct Transcript of certain records and proceedings, in the case of J. C. Rudbach, vs. The Steamer "South Coast," etc., No. 15,939, as the same now remain on file and of record in this office, said Transcript having been prepared pursuant to and in accordance with the Praeipe, (copy of which is embodied in this transcript), and the instructions of the proctors for respondent and appellant herein.

I further certify that the costs for preparing and certifying the foregoing Apostles on Appeal is the sum of Sixty Dollars and Twenty Cents (\$60.20), and that the same has been paid to me by the proctors for the appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 29th day of Sept., A. D. 1916.

[Seal]

WALTER B. MALING,
Clerk.

By C. W. Calbreath,
Deputy Clerk. [116]

[Endorsed]: No. 2865. United States Circuit Court of Appeals for the Ninth Circuit. South Coast Steamship Company, a Corporation, Claimant of the Steamer "South Coast," etc., Appellant, vs. J. C. Rudbach, Appellee. Apostles on Appeal. Upon Appeal from the United States District Court for the Northern District of California, First Division.

Filed September 30, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

